

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1673-MWD-E TCEQ ID: RN102796679 CASE NO.: 36689

RESPONDENT NAME: City of Whitesboro

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

SITE WHERE VIOLATION(S) OCCURRED: City of Whitesboro, located on Mineral Creek, approximately 1,000 feet east of United States ("U.S.") Highway 377 and approximately 0.8 mile north of the intersection of U.S. Highway 82 and 377, Whitesboro, Grayson County

TYPE OF OPERATION: Wastewater treatment system

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on March 16, 2009. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768
TCEQ Enforcement Coordinator: Ms. Evette Alvarado, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2573; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387
Respondent: The Honorable W. D. Welch, Mayor, City of Whitesboro, P.O. Box 340, Whitesboro, Texas 76273
Respondent's Attorney: Not represented by counsel on this enforcement matter

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 15, 2008</p> <p>Date of NOV/NOE Relating to this Case: October 9, 2008 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to comply with the permitted effluent limitations for total suspended solids and 5-day biochemical oxygen demand, carbonaceous [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010464001, Effluent Limitations and Monitoring Requirements No. 1].</p>	<p>Total Assessed: \$5,160</p> <p>Total Deferred: \$1,032 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$4,128</p> <p>Total Paid (Due) to General Revenue: \$0</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>1) The Order will require the Respondent to implement and complete a Supplemental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also 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. WQ0010464001, 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 this Ordering Provision.</p>

Additional ID No(s): WQ0010464001, TPDES0023566

Attachment A
Docket Number: 2008-1673-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Whitesboro
Payable Penalty Amount:	Four Thousand One Hundred Twenty-Eight Dollars (\$4,128)
SEP Amount:	Four Thousand One Hundred Twenty-Eight Dollars (\$4,128)
Type of SEP:	Pre-approved
Third-Party Recipient:	Keep Texas Beautiful
Location of SEP:	Grayson County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to cleanup rivers, lakes, and shorelines, by supplying project coordination, labor, supplies, and materials for cleanup events and by providing assistance with disposal fees for proper disposal of wastes collected at events. To maximize the event, cleanups will use volunteers for labor. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by improving water quality of lakes, rivers, and creeks, reducing flooding caused by blockage of drainage outlets, reducing the potential threat to wildlife, decreasing damage to boats, and reducing injury to swimmers and bathers.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Hester Bloom, Program Manager
Keep Texas Beautiful
P.O. Box 2251
Austin, Texas 78768

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	13-Oct-2008	Screening	20-Oct-2008	EPA Due	
	PCW	31-Oct-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Whitesboro
Reg. Ent. Ref. No.	RN102796679
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36689	No. of Violations	1
Docket No.	2008-1673-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Evette Alvarado
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000
		EC's Team	Enforcement Team 1

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

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

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 20-Oct-2008

Docket No. 2008-1673-MWD-E

PCW

Respondent City of Whitesboro

Policy Revision 2 (September 2002)

Case ID No. 36689

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102796679

Media [Statute] Water Quality

Enf. Coordinator Evette Alvarado

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)	15	75%
	Other written NOVs	0	0%
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	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) 75%

>> 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

Enhancement recommended for 13 monthly self-reported effluent violations and two NOV's for same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 75%

Screening Date 20-Oct-2008	Docket No. 2008-1673-MWD-E	PCW														
Respondent City of Whitesboro		<small>Policy Revision 2 (September 2002)</small>														
Case ID No. 36689		<small>PCW Revision October 30, 2008</small>														
Reg. Ent. Reference No. RN102796679																
Media [Statute] Water Quality																
Enf. Coordinator Evette Alvarado																
Violation Number <input type="text" value="1"/>																
Rule Cite(s)	Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010464001, Effluent Limitations and Monitoring Requirements No. 1															
Violation Description	Failed to comply with the permitted effluent limitations, as shown in the attached effluent table.															
	Base Penalty	<input type="text" value="\$10,000"/>														
>> Environmental, Property and Human Health Matrix																
	Harm															
	Release Major Moderate Minor															
OR	Actual	<input type="text" value="x"/>														
	Potential	<input type="text"/>														
	Percent	<input type="text" value="10%"/>														
>> Programmatic Matrix																
	Falsification Major Moderate Minor															
	<input type="text"/>	<input type="text" value="0%"/>														
Matrix Notes	A simplified model was used to evaluate carbonaceous biochemical oxygen demand to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Total suspended solids were also considered. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels 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="3"/>	<input type="text" value="152"/> Number of violation days														
mark only one with an x	<table border="1" style="border-collapse: collapse;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>weekly</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"/>	weekly	<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="\$3,000"/>
daily	<input type="text"/>															
weekly	<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"/>															
	<input type="text" value="Three quarterly events are recommended."/>															
Good Faith Efforts to Comply																
	0.0% Reduction	<input type="text" value="\$0"/>														
	Before NOV NOV to EDPRP/Settlement Offer															
Extraordinary	<input type="text"/>															
Ordinary	<input type="text"/>															
N/A	<input checked="" type="text" value="x"/> (mark with x)															
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>															
	Violation Subtotal	<input type="text" value="\$3,000"/>														
Economic Benefit (EB) for this violation																
	Statutory Limit Test															
Estimated EB Amount	<input type="text" value="\$208"/>	Violation Final Penalty Total <input type="text" value="\$5,160"/>														
	This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$5,160"/>															

Economic Benefit Worksheet

Respondent City of Whitesboro
Case ID No. 36689
Reg. Ent. Reference No. RN102796679
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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Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$2,080	31-Jul-2007	31-Jul-2009	2.00	\$208	n/a	\$208
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to conduct employee training to ensure that process control tests and sludge wasting are conducted on a regular basis to ensure compliance with permitted effluent limits. Date required is the first month of excursions. Final date is the expected date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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 \$2,080

TOTAL \$208

City of Whitesboro
2008-1673-MWD-E

EFFLUENT VIOLATION TABLE				
Months	TSS daily ave. conc.	5-day CBOD daily max. single grab	5-day CBOD daily ave. conc.	5- day CBOD daily ave. loading
	Limit = 15 mg/L	Limit = 25 mg/L	Limit = 10 mg/L	Limit = 75 lbs/day
7/31/2007	c	30	21	84.5
01/31/2008	17	c	c	c
02/29/2008	16	c	c	c
05/31/2008	c	c	17	c
06/30/2008	c	c	18	c

ave. = average
c = compliant
conc. = concentration
TSS = total suspended solids

CBOD = biochemical oxygen demand, carbonaceous
max. = maximum
mg/L = milligrams per Liter
lbs/day = pounds per day

23	07/27/2005	(420594)
24	08/18/2005	(441613)
25	09/26/2005	(441614)
26	10/14/2005	(441615)
27	11/14/2005	(470000)
28	12/19/2005	(470001)
29	01/17/2006	(470002)
30	02/21/2006	(469998)
31	03/23/2006	(469999)
32	03/23/2006	(499170)
33	04/14/2006	(499171)
34	05/15/2006	(499172)
35	06/26/2006	(499173)
36	07/28/2006	(521212)
37	08/14/2006	(521213)
38	09/18/2006	(521214)
39	10/16/2006	(577485)
40	11/20/2006	(577486)
41	12/18/2006	(577487)
42	01/18/2007	(577488)
43	02/26/2007	(577480)
44	03/12/2007	(577481)
45	04/13/2007	(577482)
46	05/14/2007	(577483)
47	05/31/2007	(560016)
48	06/18/2007	(577484)
49	07/16/2007	(602207)
50	08/09/2007	(602208)
51	09/20/2007	(602209)
52	10/18/2007	(620358)
53	11/21/2007	(620359)
54	12/17/2007	(620360)
55	01/16/2008	(672679)
56	02/04/2008	(616653)
57	02/19/2008	(672677)
58	03/14/2008	(672678)
59	04/17/2008	(690685)
60	05/15/2008	(690686)
61	10/10/2008	(702927)

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

Date:	10/31/2004	(353773)		
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:	11/30/2004	(382788)		
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:	05/31/2005	(420593)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
	TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	06/30/2005	(420594)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
	TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	07/31/2005	(441613)		
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
	TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	10/31/2005	(470000)		
Self Report?	YES		Classification:	Moderate

Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
	TWC Chapter 26 26.121(a)		
Description	Failure to meet the limit for one or more permit parameter		
Date:	11/30/2005	(470001)	
Self	YES		Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
	TWC Chapter 26 26.121(a)		
Description	Failure to meet the limit for one or more permit parameter		
Date:	08/31/2006	(521214)	
Self	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	(560016)	
Self	NO		Classification: Minor
Citation:	30 TAC Chapter 317 317.4(a)(8)		
	30 TAC Chapter 317 317.7(i)		
Description	Failure to provide documentation of the annual testing for the reduced pressure backflow prevention assembly (RPBP) device at the plant's main potable water service line.		
Self	NO		Classification: Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5)		
	30 TAC Chapter 317 317.5(e)(1)		
Description	Failure to properly maintain treatment units.		
Self	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 any discharge which has reasonable likelihood of adversely affecting human health or the environment.		
Self	NO		Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Rqmt Prov:	PERMIT WQ0010464-001		
Description	Failure to comply with permit limitations.		
Date:	07/31/2007	(602208)	
Self	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:	11/16/2007	(596480)	
Self	NO		Classification: Minor
Citation:	30 TAC Chapter 317 317.4(a)(8)		
	30 TAC Chapter 317 317.7(i)		
Description	Failure to provide documentation of the annual testing for the reduced pressure backflow prevention assembly (RPBP) device at the plant's main potable water service line.		
Self	NO		Classification: Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5)		
	30 TAC Chapter 317 317.5(e)(1)		
Description	Failure to properly maintain treatment units.		
Self	NO		Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Rqmt Prov:	PERMIT WQ0010464-001		
Description	Failure to comply with permit limitations.		
Self	NO		Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
	30 TAC Chapter 305, SubChapter F 305.125(5)		
Rqmt Prov:	PERMIT WQ0010464-001		
Description	Failure to comply with permit limitations.		
Self	NO		Classification: Minor
Citation:	30 TAC Chapter 317 317.6(c)(1)		
	30 TAC Chapter 317 317.6(c)(2)(A)		
	30 TAC Chapter 317 317.6(c)(2)(B)(i)		
	30 TAC Chapter 317 317.6(c)(2)(B)(ii)		

30 TAC Chapter 317 317.6(c)(2)(C)
30 TAC Chapter 317 317.6(c)(2)(D)
30 TAC Chapter 317 317.6(c)(2)(E)
30 TAC Chapter 317 317.6(c)(2)(F)
30 TAC Chapter 317 317.6(c)(2)(G)
30 TAC Chapter 317 317.6(c)(2)(H)(i)
30 TAC Chapter 317 317.6(c)(2)(H)(ii)
30 TAC Chapter 317 317.6(c)(3)

Description Failure to provide a functioning UV system.
Date: 01/31/2008 (672677)
Self 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: 02/29/2008 (672678)
Self 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: 05/31/2008
Self 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: 06/30/2008
Self YES Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)

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

F. Environmental audits.

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 WHITESBORO
RN102796679

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

AGREED ORDER
DOCKET NO. 2008-1673-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 Whitesboro ("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 system located on Mineral Creek, approximately 1,000 feet east of United States ("U.S.") Highway 377 and approximately 0.8 mile north of the intersection of U.S. Highway 82 and 377 in Whitesboro, Grayson 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 October 14, 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 Five Thousand One Hundred Sixty Dollars (\$5,160) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations").

One Thousand Thirty-Two Dollars (\$1,032) 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. Four Thousand One Hundred Twenty-Eight Dollars (\$4,128) shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the City is alleged to have failed to comply with the permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010464001, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on September 15, 2008, and shown in the following table:

EFFLUENT VIOLATION TABLE				
Months	TSS daily ave. conc	5-day CBOD daily max. single grab	5-day CBOD daily ave. conc	5-day CBOD daily ave. loading
	Limit = 15 mg/L	Limit = 25 mg/L	Limit = 10 mg/L	Limit = 75 lbs/day
7/31/2007	c	30	21	84.5
01/31/2008	17	c	c	c
02/29/2008	16	c	c	c
05/31/2008	c	c	17	c
06/30/2008	c	c	18	c

ave. = average

conc. = concentration

CBOD = biochemical oxygen demand, carbonaceous

c = compliant

TSS = total suspended solids

max. = maximum

mg/L = milligrams per Liter

lbs/day = pounds per day

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Whitesboro, Docket No. 2008-1673-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. The City shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Four Thousand One Hundred Twenty-Eight Dollars (\$4,128) of the assessed administrative penalty shall be offset with the condition that the City implement the SEP defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that, within 90 days after the effective date of this Agreed Order, the City shall submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010464001, 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 this Ordering Provision. 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:

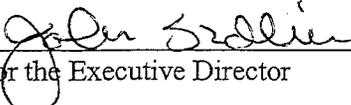
Water Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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

2/27/2009
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

1-7-2009
Date

W. D. WELCH

Name (Printed or typed)
Authorized Representative of
City of Whitesboro

Mayor

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

Attachment A
Docket Number: 2008-1673-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Whitesboro
Payable Penalty Amount: Four Thousand One Hundred Twenty-Eight Dollars (\$4,128)
SEP Amount: Four Thousand One Hundred Twenty-Eight Dollars (\$4,128)
Type of SEP: Pre-approved
Third-Party Recipient: Keep Texas Beautiful
Location of SEP: Grayson County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to cleanup rivers, lakes, and shorelines, by supplying project coordination, labor, supplies, and materials for cleanup events and by providing assistance with disposal fees for proper disposal of wastes collected at events. To maximize the event, cleanups will use volunteers for labor. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by improving water quality of lakes, rivers, and creeks, reducing flooding caused by blockage of drainage outlets, reducing the potential threat to wildlife, decreasing damage to boats, and reducing injury to swimmers and bathers.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Hester Bloom, Program Manager
Keep Texas Beautiful
P.O. Box 2251
Austin, Texas 78768

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

