

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1741-MWD-E **TCEQ ID:** RN102077054 **CASE NO.:** 36753

RESPONDENT NAME: City of Hackberry

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Hackberry, located at the southern end of Maxwell Road, Hackberry, Denton County</p> <p>TYPE OF OPERATION: Wastewater treatment facility</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 27, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Jeremy Escobar, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-1460; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: The Honorable Jeromy Cannon, Mayor, City of Hackberry, 119 Maxwell Road, Hackberry, Texas 75034 Ms. Brenda Lewallen, City Administrator, City of Hackberry, 119 Maxwell Road, Hackberry, Texas 75034 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: September 30, 2008</p> <p>Date of NOV/NOE Relating to this Case: October 23, 2008 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to comply with permit effluent limits for dissolved oxygen, total suspended solids, residual chlorine and carbonaceous biochemical oxygen demand [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013434001, Interim Effluent Limitations and Monitoring Requirements Nos. 1, 2, and 6].</p>	<p>Total Assessed: \$7,800</p> <p>Total Deferred: \$1,560 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$6,240</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 Respondent will be required 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. WQ0013434001, 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): WQ0013434001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	23-Oct-2008	Screening	3-Nov-2008	EPA Due	
	PCW	3-Nov-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	City of Hackberry		
Reg. Ent. Ref. No.	102077054		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36753	No. of Violations	1
Docket No.	2008-1741-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Jeremy Escobar
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit	Minimum \$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$4,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	115.0% Enhancement	Subtotals 2, 3, & 7	\$4,600
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Notes: Enhancement due to 17 monthly self-reported effluent violations, two NOV's with similar violations, and one Agreed Order with denial of liability.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1,045
Approx. Cost of Compliance	\$10,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,600
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OTHER FACTORS AS JUSTICE MAY REQUIRE	-9.3%	Adjustment	-\$800
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended reduction in penalty so that monthly self-reported violations do not overly impact the penalty amount.

Final Penalty Amount	\$7,800
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,800
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DEFERRAL	20.0% Reduction	Adjustment	-\$1,560
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$6,240
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Screening Date 3-Nov-2008

Docket No. 2008-1741-MWD-E

PCW

Respondent City of Hackberry

Policy Revision 2 (September 2002)

Case ID No. 36753

PCW Revision June 12, 2008

Reg. Ent. Reference No. 102077054

Media [Statute] Water Quality

Enf. Coordinator Jeremy Escobar

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	19	95%
	Other written NOVs	0	0%
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) 115%

>> **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 due to 17 monthly self-reported effluent violations, two NOVs with similar violations, and one Agreed Order with denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 115%

Screening Date 3-Nov-2008	Docket No. 2008-1741-MWD-E	PCW														
Respondent City of Hackberry		<i>Policy Revision 2 (September 2002)</i>														
Case ID No. 36753		<i>PCW Revision June 12, 2008</i>														
Reg. Ent. Reference No. 102077054																
Media [Statute] Water Quality																
Enf. Coordinator Jeremy Escobar																
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. WQ0013434001, Interim Effluent Limitations and Monitoring Requirements Nos. 1, 2, and 6															
Violation Description	Failed to comply with permit effluent limits, as document in a record review conducted on September 30, 2008. See attached table.															
	Base Penalty	<input type="text" value="\$10,000"/>														
>> Environmental, Property and Human Health Matrix																
OR	Harm															
	Release	Major	Moderate	Minor												
	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>												
	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	<div style="border: 1px solid black; padding: 5px;"> A simplified model was used to evaluate carbonaceous biochemical oxygen demand ("CBOD") to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Total suspended solids ("TSS"), dissolved oxygen ("DO"), and residual chlorine values 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 that are protective of human health or environmental receptors. </div>															
				Adjustment <input type="text" value="\$9,000"/>												
			<input type="text" value="\$1,000"/>													
Violation Events																
	Number of Violation Events	<input type="text" value="4"/>	Number of violation days	<input type="text" value="274"/>												
	mark only one with an x	<table border="1" style="width: 100px;"> <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="checkbox"/></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="checkbox"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>		Violation Base Penalty <input type="text" value="\$4,000"/>
daily	<input type="text"/>															
monthly	<input type="text"/>															
quarterly	<input checked="" type="checkbox"/>															
semiannual	<input type="text"/>															
annual	<input type="text"/>															
single event	<input type="text"/>															
	Four quarterly events are recommended.															
Good Faith Efforts to Comply																
		<input type="text" value="0.0%"/>	Reduction	<input type="text" value="\$0"/>												
		Before NOV	NOV to EDPRP/Settlement													
	Extraordinary	<input type="text"/>	<input type="text"/>													
	Ordinary	<input type="text"/>	<input type="text"/>													
	N/A	<input checked="" type="checkbox"/>	(mark with x)													
	Notes	The Respondent does not meet the good faith criteria for this violation.														
				Violation Subtotal <input type="text" value="\$4,000"/>												
Economic Benefit (EB) for this violation																
	Estimated EB Amount	<input type="text" value="\$1,045"/>	Statutory Limit Test													
			Violation Final Penalty Total	<input type="text" value="\$7,800"/>												
			This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$7,800"/>													

Economic Benefit Worksheet

Respondent: City of Hackberry
Case ID No.: 36753
Reg. Ent. Reference No.: 102077054
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
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	30-Jul-2007	31-Aug-2009	2.09	\$1,045	n/a	\$1,045

Notes for DELAYED costs
 Estimated cost to evaluate the causes of the effluent violations and to implement necessary rehabilitation to the wastewater system. Date required is the first date of non-compliance. The final date is the expected date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$10,000	TOTAL	\$1,045
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Effluent Violation Table

City of Hackberry

Permitted Effluent Limits	DO Monthly Minimum 4.0 mg/L	TSS Daily Average Conc. 15 mg/L	Residual Chlorine Monthly Minimum 1.0 mg/L	CBOD Daily Average Conc. 10 mg/L	CBOD Single Grab 35 mg/L
July 2007	C	C	0.1	C	C
August 2007	3.6	C	C	C	C
December 2007	C	20.1	0.1	39.9	85.0
January 2008	C	C	0.2	C	C
February 2008	C	C	0.1	C	C
March 2008	C	C	0.3	C	C
April 2008	C	C	0.0	12.4	C
May 2008	C	19.9	0.0	41.8	130
June 2008	C	C	0.0	C	C

Conc. = Concentration	CBOD = Carbonaceous Biochemical Oxygen Demand (5-day)	DO = Dissolved Oxygen	TSS = Total Suspended Solids	C = compliant	mg/L = milligrams per Liter
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Compliance History Report

Customer/Respondent/Owner-Operator: CN601574031 City of Hackberry Classification: AVERAGE Rating: 1.46
 Regulated Entity: RN102077054 CITY OF HACKBERRY Classification: AVERAGE Site Rating: 1.46
 ID Number(s): WASTEWATER PERMIT WQ0013434001
 WASTEWATER PERMIT TPDES0103276
 WASTEWATER PERMIT TX0103276
 WASTEWATER LICENSING LICENSE WQ0013434001
 Location: southern end of Maxwell Road in the City of Hackberry in Denton County, Texas Rating Date: 9/1/2008 Repeat Violator: NO
 TCEQ Region: REGION 04 - DFW METROPLEX
 Date Compliance History Prepared: October 28, 2008
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: October 28, 2003 to October 28, 2008
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Jeremy Escobar Phone: 239 - 1460

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership 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: 08/20/2006 ADMINORDER 2005-1107-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 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(17)
 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.)

N/A

1	02/26/2004	(322155)
2	02/26/2004	(322156)
3	02/26/2004	(322157)
4	02/26/2004	(322159)
5	02/26/2004	(322160)
6	02/26/2004	(322162)
7	02/26/2004	(322163)
8	02/26/2004	(322164)
9	02/26/2004	(322165)
10	02/26/2004	(322166)
11	02/26/2004	(322167)
12	02/26/2004	(322168)
13	02/26/2004	(322169)
14	02/26/2004	(322170)
15	02/26/2004	(322171)
16	02/26/2004	(322172)

17	02/26/2004	(322173)
18	02/26/2004	(322174)
19	02/26/2004	(322176)
20	02/26/2004	(322177)
21	02/26/2004	(322178)
22	02/26/2004	(322179)
23	02/26/2004	(322180)
24	02/26/2004	(322181)
25	02/28/2004	(322154)
26	04/19/2004	(322158)
27	04/19/2004	(322175)
28	04/19/2004	(388527)
29	04/26/2004	(322161)
30	07/02/2004	(274727)
31	07/22/2004	(363988)
32	08/16/2004	(363989)
33	09/10/2004	(333513)
34	09/17/2004	(363990)
35	09/27/2004	(363991)
36	10/26/2004	(363992)
37	11/29/2004	(363993)
38	12/27/2004	(363994)
39	01/27/2005	(388531)
40	03/09/2005	(388528)
41	03/16/2005	(388530)
42	03/30/2005	(388529)
43	04/29/2005	(426043)
44	05/31/2005	(426044)
45	06/03/2005	(371555)
46	06/21/2005	(426045)
47	07/22/2005	(426046)
48	10/11/2005	(479146)
49	10/21/2005	(479147)
50	11/28/2005	(479148)
51	12/27/2005	(479149)
52	02/27/2006	(479145)
53	04/10/2006	(505001)
54	04/28/2006	(505002)
55	05/30/2006	(505003)
56	06/21/2006	(505004)
57	07/31/2006	(527304)
58	08/28/2006	(527305)
59	10/02/2006	(628391)
60	11/06/2006	(628393)
61	12/04/2006	(628395)
62	01/03/2007	(628396)
63	01/29/2007	(628397)
64	03/06/2007	(628383)
65	03/26/2007	(628384)
66	05/30/2007	(560013)
67	06/25/2007	(628385)
68	08/15/2007	(628389)
69	09/05/2007	(628390)
70	09/17/2007	(628386)
71	09/17/2007	(628387)
72	09/17/2007	(628388)
73	10/16/2007	(628392)
74	12/03/2007	(628394)
75	01/02/2008	(676384)
76	01/24/2008	(676385)
77	02/11/2008	(617473)
78	02/22/2008	(694841)
79	02/29/2008	(694846)
80	03/24/2008	(694842)
81	04/22/2008	(694843)
82	05/27/2008	(694844)
83	07/07/2008	(694845)
84	10/23/2008	(704197)

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

Date: 03/31/2004 (322161)

Description: Failure to provide a mechanism to control and regulate the type, character, and quality of waste which may be discharged to the disposal system.

Date: 07/31/2007 (628390)

Self Report? YES Classification: Moderate

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

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

Date: 08/31/2007 (628392)

Self Report? YES Classification: Moderate

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

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

Date: 12/31/2007 (676385)

Self Report? YES Classification: Moderate

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

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

Date: 01/31/2008 (694841)

Self Report? YES Classification: Moderate

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

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

Date: 02/29/2008 (694842)

Self Report? YES Classification: Moderate

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

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

Date: 03/31/2008 (694843)

Self Report? YES Classification: Moderate

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

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

Date: 04/30/2008 (694844)

Self Report? YES Classification: Moderate

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

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

Date: 05/31/2008 (694845)

Self Report? YES Classification: Moderate

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

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

Date: 06/30/2008

Self Report? YES Classification: Moderate

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

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

F. Environmental audits.

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

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 (363988)		
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 (363989)		
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:	07/06/2004 (274727)		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 317 317.4(a)(8) 30 TAC Chapter 317 317.7(i)		
Description:	Failure to have an RPZ backflow prevention device installed on the main potable line to the WWTP.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to calibrate secondary flow measuring devices annually.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet permit limits for chlorine residual.		
Date:	07/31/2004 (363990)		
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 (363991)		
Self Report?	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	02/28/2005 (388529)		
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:	07/31/2006 (527305)		
Self Report?	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	04/30/2007 (628386)		
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	05/29/2007 (560013)		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)(B) 30 TAC Chapter 305, SubChapter F 305.125(1)(C)		
Rqmt Prov:	PERMIT WQ0013434-001		
Description:	Failure to submit ASRs in a timely manner.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 317 317.4(c)		
Description:	Failure to provide an accessible effluent measuring device.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Rqmt Prov:	PERMIT WQ0013434-001		
Description:	Failure to properly maintain the effluent flow measuring device.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Rqmt Prov:	PERMIT WQ0013434-001		
Description:	Failure to comply with permit limitations.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 319, SubChapter A 319.7(a)		
Description:	Failure to document necessary monitoring data for field TCR analyses.		
Self Report?	NO	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.176(a)		

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF HACKBERRY
RN102077054

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§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1741-MWD-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Hackberry ("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 facility at the southern end of Maxwell Road in Hackberry, Denton County, Texas (the "Facility").
2. The City has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
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 28, 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 Seven Thousand Eight Hundred Dollars (\$7,800) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations").

The City has paid Six Thousand Two Hundred Forty Dollars (\$6,240) of the administrative penalty and One Thousand Five Hundred Sixty Dollars (\$1,560) is deferred contingent upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty.

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

II. ALLEGATIONS

As owner and operator of the Facility, the City is alleged to have failed to comply with permit effluent limits, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013434001, Interim Effluent Limitations and Monitoring Requirements Nos. 1, 2, and 6, as documented during a record review conducted on September 30, 2008, and as illustrated in the following table:

Effluent Violation Table City of Hackberry					
Permitted Effluent Limits	DO Monthly Minimum 4.0 mg/L	TSS Daily Average Conc. 15 mg/L	Residual Chlorine Monthly Minimum 1.0 mg/L	CBOD Daily Average Conc. 10 mg/L	CBOD Single Grab 35 mg/L
July 2007	C	C	0.1	C	C
August 2007	3.6	C	C	C	C
December 2007	C	20.1	0.1	39.9	85.0
January 2008	C	C	0.2	C	C
February 2008	C	C	0.1	C	C
March 2008	C	C	0.3	C	C
April 2008	C	C	0.0	12.4	C
May 2008	C	19.9	0.0	41.8	130
June 2008	C	C	0.0	C	C

Conc. = Concentration	CBOD = Carbonaceous Biochemical Oxygen Demand (5-day)	DO = Dissolved Oxygen	TSS = Total Suspended Solids	C = compliant	mg/L = milligrams per Liter
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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 Hackberry, Docket No. 2008-1741-MWD-E" to:

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

2. It is further ordered that the City shall, within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0013434001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent

limitations. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

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

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

John Sadler
For the Executive Director

4/13/2009
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.

Brenda Lewallen
Signature

2-13-09
Date

Brenda Lewallen
Name (Printed or typed)
Authorized Representative of
City of Hackberry

City Administrator
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.