

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2009-0051-MWD-E TCEQ ID: RN101916203 CASE NO.: 37036**

**RESPONDENT NAME: City of Emory**

|  |   |  |
|--|---|--|
| <b>ORDER TYPE:</b>   |   |  |
| <input checked="" type="checkbox"/> 1660 AGREED ORDER  | <input type="checkbox"/> FINDINGS AGREED ORDER              | <input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING       |
| <input type="checkbox"/> FINDINGS DEFAULT ORDER  | <input type="checkbox"/> SHUTDOWN ORDER                     | <input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| <input type="checkbox"/> AMENDED ORDER   | <input type="checkbox"/> EMERGENCY ORDER                    |  |
| <b>CASE TYPE:</b>  |   |  |
| <input type="checkbox"/> AIR   | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE              |
| <input type="checkbox"/> PUBLIC WATER SUPPLY   | <input type="checkbox"/> PETROLEUM STORAGE TANKS            | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION                  |
| <input checked="" type="checkbox"/> WATER QUALITY  | <input type="checkbox"/> SEWAGE SLUDGE                      | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL               |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE   | <input type="checkbox"/> RADIOACTIVE WASTE                  | <input type="checkbox"/> DRY CLEANER REGISTRATION                    |
| <p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> City of Emory WTP, located at Freebridge Road approximately 2,000 feet west of Freebridge Road and one mile south of Farm-to-Market Road 35, East Tawakoni, Rains County</p> <p><b>TYPE OF OPERATION:</b> Wastewater treatment facility</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on May 4, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b><br/> <b>TCEQ Attorney/SEP Coordinator:</b> Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768<br/> <b>TCEQ Enforcement Coordinator:</b> Ms. Jennifer Graves, Enforcement Division, Enforcement Team 1, MC R-15, (956) 430-6023;<br/>                 Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387<br/> <b>Respondent:</b> The Honorable Cay B. House, Mayor, City of Emory, P.O. Box 100, Emory, Texas 75440<br/> <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p> |   |  |

**VIOLATION SUMMARY CHART:**

| VIOLATION INFORMATION   | PENALTY CONSIDERATIONS  | CORRECTIVE ACTIONS TAKEN/REQUIRED   |
|---|---|---|
| <p><b>Type of Investigation:</b><br/> <input type="checkbox"/> Complaint<br/> <input type="checkbox"/> Routine<br/> <input type="checkbox"/> Enforcement Follow-up<br/> <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> November 21, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> January 8, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a record review.</p> <p><b>WATER</b></p> <p>Failure to comply with the permitted effluent limitations for total suspended solids [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010082002, Effluent Limitations and Monitoring Requirements No. 1].</p> | <p><b>Total Assessed:</b> \$5,250</p> <p><b>Total Deferred:</b> \$1,050<br/> <input checked="" type="checkbox"/> Expedited Settlement<br/> <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$4,200</p> <p><b>Total Paid (Due) to General Revenue:</b> \$0</p> <p><b>Site Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> | <p><b>Ordering Provisions:</b></p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental 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. WQ0010082002, 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 receipts and/or other records to demonstrate compliance.</p> |

Additional ID No(s):: WQ0010082002

Attachment A

Docket Number: 2009-0051-MWD-E

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** City of Emory  
**Payable Penalty Amount:** Four Thousand Two Hundred Dollars (\$4,200)  
**SEP Amount:** Four Thousand Two Hundred Dollars (\$4,200)  
**Type of SEP:** Pre-approved  
**Third-Party Recipient:** Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Water or Wastewater Treatment Assistance  
**Location of SEP:** Rains 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 Third-Party Recipient shall repair or replace failing water systems or on-site wastewater systems for low income homeowners. The Third-Party Recipient shall use SEP funds to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems. The Third-Party recipient shall use a consistent and documented system for determining eligible participants.

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 protecting water sources for drinking, recreation, and wildlife from contamination.

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**

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:

Texas Association of Resource Conservation and Development Areas, Inc.  
1716 Briarcrest Drive, Suite 510  
Bryan, Texas 77802-2700

**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 ATexas 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

|              |                 |             |                  |             |                |  |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| <b>DATES</b> | <b>Assigned</b> | 12-Jan-2009 | <b>Screening</b> | 13-Jan-2009 | <b>EPA Due</b> |  |
|              | <b>PCW</b>      | 13-Jan-2009 |                  |             |                |  |

|  |               |
|--|---------------|
| <b>RESPONDENT/FACILITY INFORMATION</b> |               |
| <b>Respondent</b>                      | City of Emory |
| <b>Reg. Ent. Ref. No.</b>              | RN101916203   |
| <b>Facility/Site Region</b>            | 5-Tyler       |
| <b>Major/Minor Source</b>              | Minor         |

|  |                 |                              |                    |
|--|-----------------|------------------------------|--------------------|
| <b>CASE INFORMATION</b>                |                 |                              |                    |
| <b>Enf./Case ID No.</b>                | 37036           | <b>No. of Violations</b>     | 1                  |
| <b>Docket No.</b>                      | 2009-0051-MWD-E | <b>Order Type</b>            | 1660               |
| <b>Media Program(s)</b>                | Water Quality   | <b>Government/Non-Profit</b> | Yes                |
| <b>Multi-Media</b>                     |                 | <b>Enf. Coordinator</b>      | Jennifer Graves    |
|  |                 | <b>EC's Team</b>             | Enforcement Team 1 |
| <b>Admin. Penalty \$ Limit Minimum</b> | \$0             | <b>Maximum</b>               | \$10,000           |

## Penalty Calculation Section

|   |                   |         |
|---|-------------------|---------|
| <b>TOTAL BASE PENALTY (Sum of violation base penalties)</b> | <b>Subtotal 1</b> | \$3,000 |
|---|-------------------|---------|

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

|                           |                   |                                |         |
|---------------------------|-------------------|--------------------------------|---------|
| <b>Compliance History</b> | 80.0% Enhancement | <b>Subtotals 2, 3, &amp; 7</b> | \$2,400 |
|---------------------------|-------------------|--------------------------------|---------|

**Notes** Enhancement due to sixteen monthly self-reported effluent violations.

|                    |    |                  |                   |     |
|--------------------|----|------------------|-------------------|-----|
| <b>Culpability</b> | No | 0.0% Enhancement | <b>Subtotal 4</b> | \$0 |
|--------------------|----|------------------|-------------------|-----|

**Notes** The Respondent does not meet the culpability criteria.

|  |                   |     |
|--|-------------------|-----|
| <b>Good Faith Effort to Comply Total Adjustments</b> | <b>Subtotal 5</b> | \$0 |
|--|-------------------|-----|

|                         |                   |                   |     |
|-------------------------|-------------------|-------------------|-----|
| <b>Economic Benefit</b> | 0.0% Enhancement* | <b>Subtotal 6</b> | \$0 |
|-------------------------|-------------------|-------------------|-----|

Total EB Amounts \$3,361  
 Approx. Cost of Compliance \$25,000  
 \*Capped at the Total EB \$ Amount

|                             |                       |         |
|-----------------------------|-----------------------|---------|
| <b>SUM OF SUBTOTALS 1-7</b> | <b>Final Subtotal</b> | \$5,400 |
|-----------------------------|-----------------------|---------|

|   |      |                   |        |
|---|------|-------------------|--------|
| <b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b> | 5.0% | <b>Adjustment</b> | -\$150 |
|---|------|-------------------|--------|

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes** Recommend reduction so that monthly self-reported effluent violations do not overly-impact the penalty amount.

|                             |         |
|-----------------------------|---------|
| <b>Final Penalty Amount</b> | \$5,250 |
|-----------------------------|---------|

|                                   |                               |         |
|-----------------------------------|-------------------------------|---------|
| <b>STATUTORY LIMIT ADJUSTMENT</b> | <b>Final Assessed Penalty</b> | \$5,250 |
|-----------------------------------|-------------------------------|---------|

|                 |                 |                   |          |
|-----------------|-----------------|-------------------|----------|
| <b>DEFERRAL</b> | 20.0% Reduction | <b>Adjustment</b> | -\$1,050 |
|-----------------|-----------------|-------------------|----------|

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

**Notes** Deferral offered for expedited settlement.

|                        |         |
|------------------------|---------|
| <b>PAYABLE PENALTY</b> | \$4,200 |
|------------------------|---------|

|                                |                 |   |                 |            |
|--------------------------------|-----------------|---|-----------------|------------|
| <b>Screening Date</b>          | 13-Jan-2009     | <b>Docket No.</b>                         | 2009-0051-MWD-E | <b>PCW</b> |
| <b>Respondent</b>              | City of Emory   | <i>Policy Revision 2 (September 2002)</i> |                 |            |
| <b>Case ID No.</b>             | 37036           | <i>PCW Revision October 30, 2008</i>      |                 |            |
| <b>Reg. Ent. Reference No.</b> | RN101916203     |   |                 |            |
| <b>Media [Statute]</b>         | Water Quality   |   |                 |            |
| <b>Enf. Coordinator</b>        | Jennifer Graves |   |                 |            |

### 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 <i>(number of NOVs meeting criteria)</i>   | 16                | 80%     |
|                               | Other written NOVs   | 0                 | 0%      |
| Orders                        | Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>  | 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 <i>(number of judgements or consent decrees meeting criteria)</i>                                | 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 <i>(number of counts)</i>   | 0                 | 0%      |
| Emissions                     | Chronic excessive emissions events <i>(number of events)</i>   | 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 <i>(number of audits for which notices were submitted)</i>       | 0                 | 0%      |
|                               | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>  | 0                 | 0%      |
| <i>Please Enter Yes or No</i> |  |                   |         |
| Other                         | Environmental management systems in place for one year or more   | No                | 0%      |
|                               | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program  | No                | 0%      |
|                               | Participation in a voluntary pollution reduction program   | No                | 0%      |
|                               | Early compliance with, or offer of a product that meets future state or federal government environmental requirements  | No                | 0%      |

**Adjustment Percentage (Subtotal 2)** 80%

>> **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 16 monthly self-reported effluent violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 80%

|                                |   |                                    |                 |            |
|--------------------------------|---|------------------------------------|-----------------|------------|
| <b>Screening Date</b>          | 13-Jan-2009   | <b>Docket No.</b>                  | 2009-0051-MWD-E | <b>PCW</b> |
| <b>Respondent</b>              | City of Emory   | Policy Revision 2 (September 2002) |                 |            |
| <b>Case ID No.</b>             | 37036   | PCW Revision October 30, 2008      |                 |            |
| <b>Reg. Ent. Reference No.</b> | RN101916203   |                                    |                 |            |
| <b>Media [Statute]</b>         | Water Quality   |                                    |                 |            |
| <b>Enf. Coordinator</b>        | Jennifer Graves   |                                    |                 |            |
| <b>Violation Number</b>        | 1   |                                    |                 |            |
| <b>Rule Cite(s)</b>            | Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010082002, Effluent Limitations and Monitoring Requirements No. 1 |                                    |                 |            |
| <b>Violation Description</b>   | Failed to comply with the permitted effluent limitations, as documented during a record review on November 21, 2008, and shown in the attached violation table.   |                                    |                 |            |
| <b>Base Penalty</b>            |   |                                    |                 | \$10,000   |

**>> Environmental, Property and Human Health Matrix**

|           |             |          |       |         |
|-----------|-------------|----------|-------|---------|
| OR        | <b>Harm</b> |          |       | Percent |
|           | Major       | Moderate | Minor |         |
|           | Actual      |          | x     |         |
| Potential |             |          | x     | 10%     |

**>> Programmatic Matrix**

|                   |   |       |          |       |         |
|-------------------|---|-------|----------|-------|---------|
|                   | Falsification   | Major | Moderate | Minor | Percent |
|                   |   |       |          |       |         |
| Matrix Notes      | Flow and total suspended solids were considered to determine whether the discharged amounts of pollutants exceeded protective levels. 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. |       |          |       |         |
| <b>Adjustment</b> |   |       |          |       | \$9,000 |

**Violation Events**

Number of Violation Events:        Number of violation days

|                         |              |                      |
|-------------------------|--------------|----------------------|
| mark only one with an x | daily        | <input type="text"/> |
|                         | weekly       | <input type="text"/> |
|                         | monthly      | <input type="text"/> |
|                         | quarterly    | x                    |
|                         | semiannual   | <input type="text"/> |
|                         | annual       | <input type="text"/> |
|                         | single event | <input type="text"/> |

**Violation Base Penalty**

Three quarterly events are recommended.

**Good Faith Efforts to Comply**       Reduction     

|               |                      |                              |
|---------------|----------------------|------------------------------|
|               | Before NOV           | NOV to EDRP/Settlement Offer |
| Extraordinary | <input type="text"/> | <input type="text"/>         |
| Ordinary      | <input type="text"/> | <input type="text"/>         |
| N/A           | x                    | (mark with x)                |

**Notes**      The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal**

|   |                                      |  |
|---|--------------------------------------|--|
| <b>Economic Benefit (EB) for this violation</b> | <b>Statutory Limit Test</b>          |  |
| Estimated EB Amount                             | <input type="text" value="\$3,361"/> | Violation Final Penalty Total <input type="text" value="\$5,670"/>                               |
|   |                                      | This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$5,670"/> |

## Economic Benefit Worksheet

**Respondent:** City of Emory  
**Case ID No.:** 37036  
**Reg. Ent. Reference No.:** RN101916203  
**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 |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$  |           |               |            |     |                |               |           |

### Delayed Costs

|                          |          |             |             |      |       |         |         |
|--------------------------|----------|-------------|-------------|------|-------|---------|---------|
| Equipment                |          |             |             | 0.00 | \$0   | \$0     | \$0     |
| Buildings                |          |             |             | 0.00 | \$0   | \$0     | \$0     |
| Other (as needed)        | \$25,000 | 30-Nov-2007 | 31-Oct-2009 | 1.92 | \$160 | \$3,201 | \$3,361 |
| 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)        |          |             |             | 0.00 | \$0   | n/a     | \$0     |

Notes for DELAYED costs

Estimated cost for the Respondent to remove sludge from two lagoons. Date Required is the initial month of noncompliance. 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 | \$25,000 | <b>TOTAL</b> | \$3,361 |
|----------------------------|----------|--------------|---------|

**EFFLUENT VIOLATION TABLE****City of Emory****Docket No. 2009-0051-MWD-E**

| <b>Months</b> | <b>TSS Daily Avg. Loading</b><br>Limit = 9.2 lbs/day | <b>TSS Daily Avg. Conc.</b><br>Limit = 25 mg/L | <b>TSS Max. Single Grab</b><br>Limit = 45 mg/L |
|---------------|--|--|--|
| 11/30/2007    | c  | c  | 86.7   |
| 1/31/2008     | c  | c  | 46.0   |
| 2/29/2008     | 9.80   | 37.00  | 80.0   |
| 3/31/2008     | 13.17  | 40.40  | 96.0   |
| 4/30/2008     | c  | c  | 46.0   |
| 8/31/2008     | c  | 35.24  | 60.0   |

TSS = total suspended solids      mg/L = milligrams per liter  
avg. = average                              max. = maximum  
conc. = concentration                      c = compliant  
lbs/day = pounds per day



# Compliance History Report

Customer/Respondent/Owner-Operator: CN600662753 City of Emory Classification: AVERAGE Rating: 1.65  
Regulated Entity: RN101916203 CITY OF EMORY WTP Classification: AVERAGE Site Rating: 0.76

ID Number(s): WASTEWATER PERMIT WQ0010082002  
WASTEWATER PERMIT TPDES0002658  
WASTEWATER PERMIT TX0002658

Location: FREEBRIDGE RD APPROX 2000' W OF  
FREEBRIDGE RD AND 1 M S OF  
FM 35 IN EAST TAWAKONI,  
RAINS CO, TX

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: January 12, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 12, 2004 to January 12, 2009

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

Name: Jennifer Graves Phone: 956-430-6023

## 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
6. Rating Date: 9/1/2008 Repeat Violator: NO

## Components (Multimedia) for the Site :

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

N/A

- 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 | 01/12/2004 | (294317) |
| 2 | 02/17/2004 | (294308) |
| 3 | 02/18/2004 | (262454) |
| 4 | 03/19/2004 | (294309) |
| 5 | 04/19/2004 | (351656) |
| 6 | 08/16/2004 | (351657) |
| 7 | 11/08/2004 | (381632) |
| 8 | 11/08/2004 | (381634) |
| 9 | 11/08/2004 | (381635) |

|    |            |          |
|----|------------|----------|
| 10 | 11/08/2004 | (381636) |
| 11 | 11/08/2004 | (381637) |
| 12 | 11/08/2004 | (381638) |
| 13 | 11/19/2004 | (381639) |
| 14 | 12/20/2004 | (381640) |
| 15 | 01/14/2005 | (346246) |
| 16 | 01/20/2005 | (381641) |
| 17 | 02/21/2005 | (419425) |
| 18 | 03/17/2005 | (381633) |
| 19 | 04/18/2005 | (419426) |
| 20 | 05/16/2005 | (419427) |
| 21 | 06/17/2005 | (419428) |
| 22 | 07/21/2005 | (440587) |
| 23 | 07/31/2005 | (440588) |
| 24 | 09/16/2005 | (440589) |
| 25 | 10/24/2005 | (468010) |
| 26 | 11/16/2005 | (468011) |
| 27 | 12/22/2005 | (468012) |
| 28 | 01/03/2006 | (451184) |
| 29 | 01/20/2006 | (468013) |
| 30 | 02/21/2006 | (468008) |
| 31 | 03/22/2006 | (468009) |
| 32 | 04/24/2006 | (497944) |
| 33 | 05/17/2006 | (497945) |
| 34 | 06/22/2006 | (497946) |
| 35 | 07/24/2006 | (519960) |
| 36 | 08/22/2006 | (519961) |
| 37 | 09/21/2006 | (519962) |
| 38 | 10/23/2006 | (544199) |
| 39 | 11/15/2006 | (519151) |
| 40 | 11/27/2006 | (544200) |
| 41 | 01/18/2007 | (574806) |
| 42 | 01/26/2007 | (544201) |
| 43 | 02/26/2007 | (574801) |
| 44 | 03/15/2007 | (574802) |
| 45 | 04/23/2007 | (574803) |
| 46 | 05/21/2007 | (574804) |
| 47 | 06/20/2007 | (574805) |
| 48 | 07/19/2007 | (601436) |
| 49 | 08/20/2007 | (601437) |
| 50 | 09/18/2007 | (601438) |
| 51 | 10/19/2007 | (619354) |
| 52 | 11/16/2007 | (619355) |
| 53 | 12/17/2007 | (619356) |
| 54 | 01/21/2008 | (671852) |
| 55 | 02/20/2008 | (671851) |
| 56 | 03/13/2008 | (689780) |
| 57 | 04/16/2008 | (689781) |
| 58 | 05/20/2008 | (689782) |
| 59 | 06/19/2008 | (710524) |
| 60 | 07/18/2008 | (710525) |
| 61 | 08/20/2008 | (710526) |
| 62 | 09/15/2008 | (710527) |
| 63 | 01/08/2009 | (708977) |

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

Date: 01/30/2004 (381632) CN600662753  
Self Report? YES Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)  
Description: Failure to meet the limit for one or more permit parameter

Date: 02/29/2004 (294309) CN600662753  
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 (381634) CN600662753  
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 (381636) CN600662753  
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 (381637) CN600662753  
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 (440587) CN600662753  
Self Report? YES Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)  
Description: Failure to meet the limit for one or more permit parameter

Date: 03/31/2007 (574803) CN600662753  
Self Report? YES Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)  
Description: Failure to meet the limit for one or more permit parameter

Date: 05/31/2007 (574805) CN600662753  
Self Report? YES Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)  
Description: Failure to meet the limit for one or more permit parameter

Date: 06/30/2007 (601436) CN600662753  
Self Report? YES Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 07/31/2007 (601437) CN600662753  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 11/30/2007 (619356) CN600662753  
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 (671851) CN600662753  
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 (689780) CN600662753  
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 (689781) CN600662753  
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 (689782) CN600662753  
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: 08/31/2008 (710527) CN600662753  
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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF EMORY  
RN101916203

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2009-0051-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 Emory ("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 located at Freebridge Road approximately 2,000 feet west of Freebridge Road and one mile south of Farm-to-Market Road 35 in East Tawakoni, Rains 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 January 13, 2009.
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 Two Hundred Fifty Dollars (\$5,250) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Four Thousand Two Hundred Dollars (\$4,200) of the administrative penalty shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP") and One Thousand Fifty Dollars (\$1,050) is deferred contingent upon the City's timely and satisfactorily 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 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. WQ0010082002, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review on November 21, 2008, and shown in the following violation table:

| EFFLUENT VIOLATION TABLE  |   |  |   |
|---|---|--|---|
| Months  | TSS Daily Avg. Loading<br>Limit = 9.2 lbs/day | TSS Daily Avg. Conc<br>Limit = 25 mg/L | TSS Max. Single Grab<br>Limit = 45 mg/L |
| 11/30/2007  | c   | c                                      | 86.7                                    |
| 1/31/2008   | c   | c                                      | 46.0                                    |
| 2/29/2008   | 9.80  | 37.00                                  | 80.0                                    |
| 3/31/2008   | 13.17   | 40.40                                  | 96.0                                    |
| 4/30/2008   | c   | c                                      | 46.0                                    |
| 8/31/2008   | c   | 35.24                                  | 60.0                                    |
| TSS = total suspended solids      mg/L = milligrams per liter<br>avg. = average                              max. = maximum<br>conc. = concentration                      c = compliant<br>lbs/day = pounds per day |   |  |   |

### III. DENIALS

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

### IV. ORDERING PROVISIONS

- 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 Emory, Docket No. 2009-0051-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
- 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 Two Hundred Dollars (\$4,200) 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.
- 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. WQ0010082002, 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 receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager  
Tyler Regional Office  
Texas Commission on Environmental Quality  
2916 Teague Drive  
Tyler, Texas 75701-3734

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 Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
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

John Zedler  
For the Executive Director

4/2/2009  
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]  
Signature

2-3-09  
Date

CAY B. HOUSE  
Name (Printed or typed)  
Authorized Representative of  
City of Emory

Mayor of Emory  
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: 2009-0051-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

**Respondent:** City of Emory

**Payable Penalty Amount:** Four Thousand Two Hundred Dollars (\$4,200)

**SEP Amount:** Four Thousand Two Hundred Dollars (\$4,200)

**Type of SEP:** Pre-approved

**Third-Party Recipient:** Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")- Water or Wastewater Treatment Assistance

**Location of SEP:** Rains 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 Third-Party Recipient shall repair or replace failing water systems or on-site wastewater systems for low income homeowners. The Third-Party Recipient shall use SEP funds to pay for the labor and materials costs related to repairing or replacing the failing systems. The recipients will not be charged for the cost of replacing or repairing the failing systems. The Third-Party recipient shall use a consistent and documented system for determining eligible participants.

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 protecting water sources for drinking, recreation, and wildlife from contamination.

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**

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:

Texas Association of Resource Conservation and Development Areas, Inc.  
1716 Briarcrest Drive, Suite 510  
Bryan, Texas 77802-2700

**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 ATexas 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.

