

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1683-MWD-E **TCEQ ID:** RN102178092 **CASE NO.:** 36695

RESPONDENT NAME: Jimmie Wayne Massey

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: Oak Hollow Wastewater Treatment Facility, located approximately 3/4 mile southeast of the intersection of Farm-to-Market Road 2540 and State Highway 35, Matagorda County</p> <p>TYPE OF OPERATION: Wastewater treatment facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on April 20, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Cheryl Thompson, Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5886; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. J. W. Massey, Owner, P.O. Box 489, Van Vleck, Texas 77482 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 8, 2008</p> <p>Date of NOV/NOE Relating to this Case: October 2, 2008 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to comply with permitted limits for total suspended solids and oil & grease [Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011768001, Effluent Limitations and Monitoring Requirements No. 1, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a)].</p>	<p>Total Assessed: \$3,000</p> <p>Total Deferred: \$600 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$100 (remaining \$2,300 due in 23 monthly payments of \$100 each)</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>Corrective Actions Taken:</p> <p>The Executive director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. On April 8, 2008, installed a new blower motor in the aeration basin;</p> <p>b. By May 31, 2008, returned to compliance with permitted effluent limits; and</p> <p>c. On September 4, 2008, performed a complete overhaul of the Facility.</p>

Additional ID No(s): WQ0011768001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

DATES	Assigned	6-Oct-2008	Screening	13-Oct-2008	EPA Due	
	PCW	21-Oct-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Jimmie Wayne Massey
Reg. Ent. Ref. No.	RN102178092
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36695	No. of Violations	1
Docket No.	2008-1683-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Cheryl Thompson
		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**

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 13-Oct-2008

Docket No. 2008-1683-MWD-E

PCW

Respondent Jimmie Wayne Massey

Policy Revision 2 (September 2002)

Case ID No. 36695

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN102178092

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

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)	11	55%
	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) 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

The Respondent self-reported 11 months of effluent violations and received one 1660 Order containing denial of liability.

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

Screening Date 13-Oct-2008	Docket No. 2008-1683-MWD-E	PCW
Respondent Jimmie Wayne Massey		<small>Policy Revision 2 (September 2002)</small>
Case ID No. 36695		<small>PCW Revision June 12, 2008</small>
Reg. Ent. Reference No. RN102178092		
Media [Statute] Water Quality		
Enf. Coordinator Cheryl Thompson		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011768001, Effluent Limitations and Monitoring Requirements No. 1, 30 Tex. Admin. Code § 305.125(1) and Tex. Water Code § 26.121(a)	
Violation Description	Failed to comply with permitted limits, as documented during a record review conducted on September 8, 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"/>		x
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
<input type="text"/>	Percent <input type="text" value="0%"/>				

Matrix Notes 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 the environment as the result of the excursions.

Adjustment

Violation Events

Number of Violation Events Number of violation days

<small>mark only one with an x</small>	daily	<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

Two quarterly events are recommended.

Good Faith Efforts to Comply Reduction

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

Notes The Respondent returned to compliance by May 31, 2008.

Violation Subtotal

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

Estimated EB Amount Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Jimmie Wayne Massey
Case ID No. 36695
Reg. Ent. Reference No. RN102178092
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	\$859	31-Jan-2008	8-Apr-2008	0.19	\$1	\$11	\$11
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)	\$13,140	31-Jan-2008	4-Sep-2008	0.59	\$391	n/a	\$391

Notes for DELAYED costs

Actual cost to install a new blower motor in the aeration basin and to complete an overhaul of the plant to help maintain TSS and Oil & Grease. Date required is the month the first non-compliant excursion was documented. Final date is the 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

\$13,999

TOTAL

\$402

Compliance History Report

Customer/Respondent/Owner-Operator:	CN601178700	MASSEY, JIMMIE WAYNE	Classification: AVERAGE	Rating: 1.32
Regulated Entity:	RN102178092	OAK HOLLOW WASTEWATER TREATMENT FACILITY	Classification: AVERAGE	Site Rating: 1.32
ID Number(s):	WASTEWATER	PERMIT		WQ0011768001
	WASTEWATER	PERMIT		TPDES0070297
	WASTEWATER	PERMIT		TX0070297
	WASTEWATER LICENSING	LICENSE		WQ0011768001
				Rating Date: 9/1/2008 Repeat Violator: NO

Location: Approximately 3/4 mile southeast of the intersection of Farm-to-Market 2540 and State Highway 35 in Matagorda County, Texas

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: October 17, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: October 17, 2003 to October 17, 2008

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

Name: Cheryl Thompson Phone: (817) 588-5886

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: 07/01/2004 | ADMINORDER 2003-1352-MWD-E |
| Classification: Moderate | |
| Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1) | |
| Rqmt Prov: Effluent Limits PERMIT | |
| Description: Failure to comply with the permit limit for Total Suspended Solids daily average (mg/l) at Outfall 001A for the monitoring periods ending 08/31/2001, 09/30/2001, and 02/28/2002. These violations meet referral criteria. | |
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | |
|----|------------|----------|
| 1 | 11/19/2003 | (311741) |
| 2 | 12/15/2003 | (311742) |
| 3 | 12/18/2003 | (254045) |
| 4 | 01/20/2004 | (311743) |
| 5 | 02/23/2004 | (311731) |
| 6 | 03/10/2004 | (311732) |
| 7 | 04/16/2004 | (311733) |
| 8 | 05/17/2004 | (358702) |
| 9 | 06/17/2004 | (311736) |
| 10 | 07/15/2004 | (358703) |
| 11 | 08/16/2004 | (358704) |
| 12 | 09/13/2004 | (358705) |
| 13 | 10/11/2004 | (358706) |
| 14 | 11/10/2004 | (385512) |
| 15 | 12/08/2004 | (385513) |
| 16 | 01/13/2005 | (385514) |
| 17 | 02/14/2005 | (385510) |
| 18 | 03/14/2005 | (385511) |
| 19 | 04/08/2005 | (423527) |
| 20 | 05/10/2005 | (423528) |
| 21 | 06/16/2005 | (423529) |
| 22 | 08/05/2005 | (444344) |
| 23 | 09/12/2005 | (444345) |
| 24 | 10/10/2005 | (474869) |
| 25 | 11/07/2005 | (474870) |
| 26 | 12/12/2005 | (474871) |

27	01/09/2006	(474872)
28	02/17/2006	(474867)
29	03/16/2006	(474868)
30	04/12/2006	(502547)
31	05/10/2006	(502548)
32	06/12/2006	(502549)
33	07/10/2006	(524866)
34	08/07/2006	(524867)
35	09/07/2006	(486103)
36	09/07/2006	(524868)
37	10/16/2006	(583972)
38	11/15/2006	(583973)
39	12/14/2006	(583974)
40	01/09/2007	(583975)
41	02/16/2007	(583967)
42	03/12/2007	(583968)
43	04/09/2007	(583969)
44	05/29/2007	(583970)
45	06/11/2007	(583971)
46	07/16/2007	(608416)
47	08/20/2007	(608417)
48	09/13/2007	(608418)
49	10/11/2007	(623024)
50	11/15/2007	(623025)
51	12/12/2007	(623026)
52	01/15/2008	(674446)
53	02/14/2008	(674444)
54	03/18/2008	(674445)
55	04/07/2008	(692785)
56	05/13/2008	(692786)
57	10/02/2008	(702377)

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

Date:	02/28/2005	(385511)	Classification:	Moderate
Self Report?	YES			
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	(423529)	Classification:	Moderate
Self Report?	YES			
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	(524868)	Classification:	Moderate
Self Report?	YES			
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:	10/31/2006	(583973)	Classification:	Moderate
Self Report?	YES			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	12/31/2006	(583975)	Classification:	Moderate
Self Report?	YES			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	01/31/2007	(583967)	Classification:	Moderate
Self Report?	YES			
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:	02/28/2007	(583968)	Classification:	Moderate
Self Report?	YES			
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	(583970)	Classification:	Moderate
Self Report?	YES			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			

Date: 01/31/2008 (674444)

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 (692785)

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 (692786)

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
JIMMIE WAYNE MASSEY
RN102178092

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1683-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 Jimmie Wayne Massey ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a wastewater treatment facility located approximately 3/4 mile southeast of the intersection of Farm-to-Market Road 2540 and State Highway 35 in Matagorda County, Texas (the "Facility").
2. The Respondent 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 Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about October 7, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Three Thousand Dollars (\$3,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Dollars (\$100) of the administrative penalty and Six Hundred Dollars (\$600) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Two Thousand Three Hundred Dollars (\$2,300) of the administrative penalty shall be payable in 23 monthly payments of One Hundred Dollars (\$100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. On April 8, 2008, installed a new blower motor in the aeration basin;
 - b. By May 31, 2008, returned to compliance with permitted effluent limits; and
 - c. On September 4, 2008, performed a complete overhaul of the Facility.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to comply with permitted limits, in violation of Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011768001, Effluent Limitations and Monitoring Requirements No. 1, 30 TEX. ADMIN. CODE § 305.125(1) and TEX. WATER CODE § 26.121(a), as documented during a record review conducted on September 8, 2008 and as depicted in the table below:

	Total Suspended Solids Daily Average (TSS)	Oil & Grease
<i>Month/Year</i>	20 mg/L	Single Grab 20 mg/L
Jan-08	21.58	21.6
Mar-08	50.92	c
Apr-08	36.68	c

milligrams per liter = mg/L compliant (no excursions) = c

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Jimmie Wayne Massey, Docket No. 2008-1683-MWD-E" to:

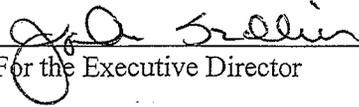
Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. 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.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

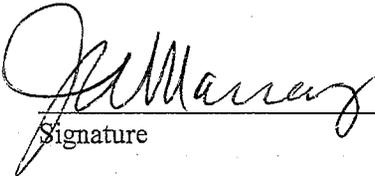
Date 4/2/2009

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

Date 2-6-09

J. W. Massey

Name (Printed or typed)
Authorized Representative of
Jimmie Wayne Massey

Dwaine

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.

