

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-1065-MWD-E TCEQ ID: RN102287984 CASE NO.: 904**  
**RESPONDENT NAME: CITY OF NEWARK**

|   |   |  |
|---|---|--|
| <b>ORDER TYPE:</b>                              |   |  |
| <input type="checkbox"/> 1660 AGREED ORDER      | <input checked="" 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       |

**SITE WHERE VIOLATIONS OCCURRED:** East bank of Derrett Creek, immediately south of the Newark Beach Road Bridge, approximately 850 feet west of the intersection of Roger Road and Berke Street, Newark, Wise County

**TYPE OF OPERATION:** Wastewater treatment plant

**SMALL BUSINESS:**  Yes  No

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

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

**COMMENTS RECEIVED:** The *Texas Register* comment period expired June 1, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  
**SEP Coördinator:** Ms. Sharon Blue, Litigation Division, MC 175, (512) 239-2223  
**TCEQ Enforcement Coördinator:** Ms. Merrilee Gerberding Hupp, Water Enforcement Section, MC 169, (512) 239-4490  
**TCEQ Regional Contact:** Mr. Sid Slocum, DFW Regional Office, MC R-4, (817) 588-5901  
**Respondent:** The Honorable H. B. Malone, Mayor, City of Newark, P.O. Box 156, Newark, Texas 76071  
**Respondent's Attorney:** Ms. Jennifer C. Gravley, Esq., Taylor, Olson, Adkins, Sralla, & Elam, L.L.P., 6000 Western Place, Suite 200, Fort Worth, Texas 76107

CHIEF CLERKS OFFICE  
 2009 MAY -5 AM 11:59  
 TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**VIOLATION SUMMARY CHART:**

| VIOLATION INFORMATION   | PENALTY CONSIDERATIONS   | CORRECTIVE ACTIONS TAKEN/REQUIRED   |
|---|--|---|
| <p><b>Type of Investigation:</b></p> <p><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 of Complaint Relating to this Case:</b><br/>None</p> <p><b>Dates of Investigation Relating to this Case:</b><br/>April 5, 2007, and July 5, 2007</p> <p><b>Date of NOE Relating to this Case:</b><br/>July 5, 2007</p> <p><b>Background Facts:</b><br/>The EDP RP was filed October 30, 2007. The Respondent filed an Answer on November 16, 2007. The case was referred to SOAH on February 5, 2008. The preliminary hearing was waived and the parties engaged in discovery. Prior to the evidentiary hearing the Executive Director received a signed Agreed Order from the Respondent.</p> <p><b>Current Compliance Status:</b><br/>Not yet in compliance.</p> <p><b>MWD:</b></p> <p>1. Failed to comply with the permitted effluent limits for dissolved oxygen ("DO"), total suspended solids ("TSS"), and ammonia-nitrogen ("NH<sub>3</sub>-N") [30 TEX. ADMIN. CODE § 305.125(1); TEX. WATER CODE § 26.121(a); TPDES Permit No. 11626001, Effluent limitations and Monitoring Requirements Nos. 1 and 6; and TCEQ Agreed Order Docket No. 2003-0014-MWD-E].</p> <p>2. Failed to submit the annual sludge report for the period ending July 31, 2006 [30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. 11626001, Sludge Provisions].</p> <p>3. Failed to timely submit Discharge Monitoring Reports ("DMRs") [30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. 11626001, Monitoring and Reporting Requirements No. 1].</p> | <p><b>Total Assessed:</b> \$21,812</p> <p><b>Total Deferred:</b> \$21,812<br/> <input type="checkbox"/> Expedited Order<br/> <input type="checkbox"/> Financial Inability to Pay<br/> <input checked="" type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$0</p> <p>The entire penalty amount of \$21,812 shall be conditionally offset by the completion of a Supplemental Environmental Project (SEP).</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>Findings Order Justification:</b><br/>At least three repeated enforcement actions over the prior five year period for the same violation. Specifically, the Respondent has been issued 36 NOVs and one Agreed Order</p> | <p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent implemented the following corrective measures:</p> <ol style="list-style-type: none"> <li>Submitted the annual sludge report for the period ending July 31, 2006; and</li> <li>Submitted the delinquent DMRs.</li> </ol> <p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 60 days, submit written certification of compliance with the effluent limits of TPDES Permit No. 11626001.</li> <li>Implement and complete a Supplemental Environmental Project (SEP) (See SEP Attachment A – Wise County/RC&amp;D Household Hazardous Waste Collection Program).</li> </ol> |

Attachment A

Docket Number: 2007-1065-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

**Respondent:** City of Newark

**Penalty Amount:** Twenty-one thousand eight hundred twelve dollars (\$21,812.00)

**SEP Offset Amount:** Twenty-one thousand eight hundred twelve dollars (\$21,812.00)

**Type of SEP:** Pre-approved

**Third-Party Recipient:** *Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")* Household Hazardous Waste Collection program

**Location of SEP:** Wise County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Offset 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

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be to the *Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")* for the Household Hazardous Waste ("HHW") Collection program, to be conducted within Wise County. Residents shall be allowed to bring household hazardous waste to a designated collection site for proper disposal. Specifically, SEP monies will pay for the labor and disposal costs associated with properly disposing of or recycling paint, thinners, pesticides, oil and gas, corrosive cleaners, fertilizers, electronics, and other wastes. Citizens will not be charged for the costs of this project. Any remaining SEP funds after completion of the HHW Collection event may, at the discretion of the TCEQ Executive Director, be spent on an RC&D Trash Dump Cleanup, Abandoned Tire Site Cleanup, Water or Wastewater Treatment Assistance, or other approved RC&D project to be conducted within Wise County. The project will be administered in accordance with TCEQ guidance on household hazardous waste and in compliance with federal, state, and local environmental laws and regulations.

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 providing for the proper disposal of debris, wastes, and tires that can leach chemicals into the soil, water, and air, as well as help rid the community of the dangers and health threats associated with non-regulated dumping.

The recycling portion of the event may include recycling of E-waste materials. E-waste materials include computers and related information technologies such as workstations, scanners, printers, hand-held diagnostic and screening tools, cell phones, servers, and televisions, among many others. Cathode ray tubes (“CRT”) are the picture tubes in computers, monitors and TVs. With the rapid evolution of technology, computers and TVs containing CRTs become obsolete in a short period of time and are simply discarded, often in landfills. A typical 17-inch CRT contains approximately two pounds of lead and larger CRTs may contain up to ten pounds of lead. E-waste can contain lead, mercury, cadmium, hexavalent chromium and brominated flame retardants.

This SEP will limit potentially toxic or hazardous E-waste from the waste stream destined for disposal or incineration and to divert the E-waste to environmentally friendly recycling. This will save valuable landfill capacity and allow the recycler to re-utilize E-waste components, including CRTs.

C. Minimum Expenditure

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

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall make one payment of \$2,612.00 to the Third-Party Recipient. Thereafter, Respondent shall make ten (10) monthly payments of \$1,920.00 to the Third-Party Recipient. Each payment shall be due by the fifteenth (15<sup>th</sup>) day of each month. Respondent shall mail a copy of the Agreed Order along with the initial contribution to:

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

**3. Records and Reporting**

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

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Offset 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 Offset Amount.

In the event of incomplete performance, the Respondent shall submit a check for any remaining amount due made payable to “Texas Commission on Environmental Quality” with the notation “SEP Refund” and the docket number of the case, and shall send it to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**5. Publicity**

Any public statements concerning this SEP made by or on behalf of 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**

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, 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 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 November 17, 2006

## TCEQ

|              |                 |             |                  |             |                |  |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| <b>DATES</b> | <b>Assigned</b> | 30-May-2007 | <b>Screening</b> | 10-Jul-2007 | <b>EPA Due</b> |  |
|              | <b>PCW</b>      | 10-Jul-2007 |                  |             |                |  |

|  |                   |                           |       |
|--|-------------------|---------------------------|-------|
| <b>RESPONDENT/FACILITY INFORMATION</b> |                   |                           |       |
| <b>Respondent</b>                      | City of Newark    |                           |       |
| <b>Reg. Ent. Ref. No.</b>              | RN102287984       |                           |       |
| <b>Facility/Site Region</b>            | Dallas/Fort Worth | <b>Major/Minor Source</b> | Minor |

|                          |                      |                          |                   |
|--------------------------|----------------------|--------------------------|-------------------|
| <b>CASE INFORMATION</b>  |                      |                          |                   |
| <b>Enf./Case ID No.</b>  | 904                  | <b>No. of Violations</b> | 3                 |
| <b>Docket No.</b>        | 2007-1065-MWD-E      | <b>Order Type</b>        | Findings          |
| <b>Media Program(s)</b>  | Water Quality        | <b>Enf. Coordinator</b>  | Merrilee Hupp     |
| <b>Multi-Media</b>       |                      | <b>EC's Team</b>         | EnforcementTeam 1 |
| <b>Admin. Penalty \$</b> | <b>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> | \$7,600 |
|---|-------------------|---------|

### 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> | 205% Enhancement | <b>Subtotals 2, 3, &amp; 7</b> | \$15,580 |
|---------------------------|------------------|--------------------------------|----------|

**Notes**  
The Respondent self-reported 34 effluent violations, received two Commission-issued NOV's for same or similar violations, and one Agreed Order without a denial of liability.

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

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

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

Before NOV    NOV to EDPRP/Settlement Offer

|               |   |               |
|---------------|---|---------------|
| Extraordinary |   |               |
| Ordinary      |   |               |
| N/A           | X | (mark with x) |

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

|                                   |         |                                   |                   |     |
|-----------------------------------|---------|-----------------------------------|-------------------|-----|
| <b>Total EB Amounts</b>           | \$481   | <b>0% Enhancement*</b>            | <b>Subtotal 6</b> | \$0 |
| <b>Approx. Cost of Compliance</b> | \$4,160 | *Capped at the Total EB \$ Amount |                   |     |

|                             |                       |          |
|-----------------------------|-----------------------|----------|
| <b>SUM OF SUBTOTALS 1-7</b> | <b>Final Subtotal</b> | \$23,180 |
|-----------------------------|-----------------------|----------|

|   |     |                   |          |
|---|-----|-------------------|----------|
| <b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b> | -6% | <b>Adjustment</b> | -\$1,368 |
|---|-----|-------------------|----------|

**Notes**  
Reduction to prevent double-enhancement of the penalty for same or similar violations that were not self-reported and to prevent self-reported violations from overly impacting the penalty amount.

|                             |          |
|-----------------------------|----------|
| <b>Final Penalty Amount</b> | \$21,812 |
|-----------------------------|----------|

|                                   |                               |          |
|-----------------------------------|-------------------------------|----------|
| <b>STATUTORY LIMIT ADJUSTMENT</b> | <b>Final Assessed Penalty</b> | \$21,812 |
|-----------------------------------|-------------------------------|----------|

|                 |              |                   |     |
|-----------------|--------------|-------------------|-----|
| <b>DEFERRAL</b> | 0% Reduction | <b>Adjustment</b> | \$0 |
|-----------------|--------------|-------------------|-----|

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

**Notes**  
No deferral is recommended for Findings Orders.

|                        |          |
|------------------------|----------|
| <b>PAYABLE PENALTY</b> | \$21,812 |
|------------------------|----------|

Screening Date 10-Jul-2007

Docket No. 2007-1065-MWD-E

PCW

Respondent City of Newark

Policy Revision 2 (September 2002)

Case ID No. 904

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102287984

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

### 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)  | 36                | 180%    |
|                               | Other written NOVs   | 0                 | 0%      |
| Orders                        | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)   | 0                 | 0%      |
|                               | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 1                 | 25%     |
| 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%      |
| <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) 205%

>> 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 34 effluent violations, received two Commission-issued NOVs for same or similar violations, and one Agreed Order without a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 205%

Screening Date 10-Jul-2007

Docket No. 2007-1065-MWD-E

PCW

Respondent City of Newark

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PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102287984

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1), Tex. Water Code § 26.121(a), TPDES Permit No. 11626001, Effluent Limitations and Monitoring Requirement Nos. 1 and 6, and TCEQ Agreed Order Docket No. 2003-0014-MWD-E

Violation Description Failed to comply with the permitted effluent limits as documented during a record review conducted on July 5, 2007. See attached effluent violation table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

| Release   | Harm  |          |       | Percent |
|-----------|-------|----------|-------|---------|
|           | Major | Moderate | Minor |         |
| Actual    |       |          | X     | 10%     |
| Potential |       |          |       |         |

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor | Percent |
|---------------|-------|----------|-------|---------|
|               |       |          |       | 0%      |

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which did not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 6 Number of violation days 455

|                         |              |   |
|-------------------------|--------------|---|
| mark only one with an x | daily        |   |
|                         | monthly      |   |
|                         | quarterly    | X |
|                         | semiannual   |   |
|                         | annual       |   |
|                         | single event |   |

Violation Base Penalty \$6,000

Six quarterly events are recommended from the effective date of the Agreed Order (October 24, 2005) to the screening date (July 10, 2007).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$470

Violation Final Penalty Total \$17,220

This violation Final Assessed Penalty (adjusted for limits) \$17,220

## Economic Benefit Worksheet

**Respondent** City of Newark  
**Case ID No.** 904  
**Reg. Ent. Reference No.** RN102287984  
**Media** Water Quality  
**Violation No.** 1

|                         |                              |
|-------------------------|------------------------------|
| <b>Percent Interest</b> | <b>Years of Depreciation</b> |
| 5.0                     | 15                           |

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

### Delayed Costs

|                          |         |             |             |     |       |     |       |
|--------------------------|---------|-------------|-------------|-----|-------|-----|-------|
| Equipment                |         |             |             | 0.0 | \$0   | \$0 | \$0   |
| Buildings                |         |             |             | 0.0 | \$0   | \$0 | \$0   |
| Other (as needed)        |         |             |             | 0.0 | \$0   | \$0 | \$0   |
| Engineering/construction |         |             |             | 0.0 | \$0   | \$0 | \$0   |
| Land                     |         |             |             | 0.0 | \$0   | n/a | \$0   |
| Record Keeping System    |         |             |             | 0.0 | \$0   | n/a | \$0   |
| Training/Sampling        |         |             |             | 0.0 | \$0   | n/a | \$0   |
| Remediation/Disposal     |         |             |             | 0.0 | \$0   | n/a | \$0   |
| Permit Costs             |         |             |             | 0.0 | \$0   | n/a | \$0   |
| Other (as needed)        | \$4,000 | 24-Oct-2005 | 29-Feb-2008 | 2.4 | \$470 | n/a | \$470 |

Notes for DELAYED costs

Estimated cost for an engineer's assessment of the treatment capabilities of the wastewater treatment facility being operated as designed and permitted. Date required is the effective date of the Agreed Order and 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                      |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Personnel                     |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment            |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2]       |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3]    |  |  |  | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed)             |  |  |  | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

|                            |         |              |       |
|----------------------------|---------|--------------|-------|
| Approx. Cost of Compliance | \$4,000 | <b>TOTAL</b> | \$470 |
|----------------------------|---------|--------------|-------|

City of Newark  
 RN102287984  
 Docket No. 2007-1065-MWD-E

Effluent Violation Table

| Effluent Characteristic |      | DO Minimum | Daily Average NH <sub>3</sub> -N Conc. | Daily Average TSS Conc. |
|-------------------------|------|------------|--|-------------------------|
| Units                   |      | (mg/L)     | (mg/L)                                 | (mg/L)                  |
| Permit Limit :          |      | 6.0        | 2.0                                    | 15.0                    |
| Month                   | Year |            |  |                         |
| December                | 2005 | c          | 2.43                                   | c                       |
| January                 | 2006 | c          | c                                      | c                       |
| February                | 2006 | c          | c                                      | c                       |
| March                   | 2006 | c          | c                                      | 15.85                   |
| April                   | 2006 | c          | c                                      | c                       |
| May                     | 2006 | 4.3        | c                                      | c                       |
| June                    | 2006 | 3.9        | c                                      | c                       |
| July                    | 2006 | 5.8        | c                                      | c                       |
| August                  | 2006 | 5.2        | c                                      | c                       |
| September               | 2006 | c          | c                                      | c                       |
| October                 | 2006 | c          | c                                      | c                       |
| November                | 2006 | c          | c                                      | c                       |
| December                | 2006 | c          | c                                      | c                       |
| February                | 2007 | c          | c                                      | c                       |
| March                   | 2007 | 4.1        | c                                      | c                       |
| April                   | 2007 | 4.9        | c                                      | c                       |

c: compliant

DO: dissolved oxygen

TSS: total suspended solids

NH<sub>3</sub>-N: ammonia-nitrogen

mg/L: milligrams per liter

Conc.: concentration

Screening Date 10-Jul-2007

Docket No. 2007-1065-MWD-E

PCW

Respondent City of Newark

Policy Revision 2 (September 2002)

Case ID No. 904

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102287984

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 305.125(17) and TPDES Permit No. 11626001, Sludge Provisions

Violation Description Failed to submit the annual sludge report for the period ending July 31, 2006 by September 1, 2006, as documented during a record review on April 5, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

| Release   | Harm  |          |       |
|-----------|-------|----------|-------|
|           | Major | Moderate | Minor |
| Actual    |       |          |       |
| Potential |       |          |       |

Percent 0%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
|               | x     |          |       |

Percent 10%

Matrix Notes

100% of the requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

312 Number of violation days

mark only one with an x

|              |   |
|--------------|---|
| daily        |   |
| monthly      |   |
| quarterly    |   |
| semiannual   |   |
| annual       |   |
| single event | x |

Violation Base Penalty \$1,000

One single event is recommended based on the April 5, 2007 investigation date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7

Violation Final Penalty Total \$2,870

This violation Final Assessed Penalty (adjusted for limits) \$2,870

## Economic Benefit Worksheet

**Respondent** City of Newark  
**Case ID No.** 904  
**Reg. Ent. Reference No.** RN102287984  
**Media** Water Quality  
**Violation No.** 2

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0              | 15                    |

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

### Delayed Costs

|                          |       |            |             |     |     |     |     |
|--------------------------|-------|------------|-------------|-----|-----|-----|-----|
| Equipment                |       |            |             | 0.0 | \$0 | \$0 | \$0 |
| Buildings                |       |            |             | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed)        |       |            |             | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction |       |            |             | 0.0 | \$0 | \$0 | \$0 |
| Land                     |       |            |             | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System    |       |            |             | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling        |       |            |             | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal     |       |            |             | 0.0 | \$0 | n/a | \$0 |
| Permit Costs             |       |            |             | 0.0 | \$0 | n/a | \$0 |
| Other (as needed)        | \$100 | 1-Sep-2006 | 31-Jan-2008 | 1.4 | \$7 | n/a | \$7 |

Notes for DELAYED costs

Estimated cost for administrative costs associated with the submittal of the annual sludge report. Date required is the date the report was due and final date is when the report is expected to be received by the TCEQ.

### Avoided Costs

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

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

Notes for AVOIDED costs

|                            |       |       |     |
|----------------------------|-------|-------|-----|
| Approx. Cost of Compliance | \$100 | TOTAL | \$7 |
|----------------------------|-------|-------|-----|

Screening Date 10-Jul-2007

Docket No. 2007-1065-MWD-E

PCW

Respondent City of Newark

Policy Revision 2 (September 2002)

Case ID No. 904

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN102287984

Media [Statute] Water Quality

Enf. Coordinator Merrilee Hupp

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 305.125(17) and TPDES Permit No. 11626001, Monitoring and Reporting Requirements No. 1

Violation Description Failed to timely submit Discharge Monthly Reports ("DMRs") for February, September, October, November, and December 2006 as well as January 2007, as documented during a record review on April 5, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

| OR        | Release | Harm  |          |       | Percent |
|-----------|---------|-------|----------|-------|---------|
|           |         | Major | Moderate | Minor |         |
| Actual    |         |       |          |       | 0%      |
| Potential |         |       |          |       |         |

>> Programmatic Matrix

| Matrix Notes | Falsification | Harm  |          |       | Percent |
|--------------|---------------|-------|----------|-------|---------|
|              |               | Major | Moderate | Minor |         |
|              |               |       |          | x     | 1%      |
|              |               |       |          |       |         |

Over 70 percent of the permit requirement was met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 6 Number of violation days 435

|                         |            |  |
|-------------------------|------------|--|
| mark only one with an x | daily      |  |
|                         | monthly    |  |
|                         | quarterly  |  |
|                         | semiannual |  |
|                         | annual     |  |
| single event            | x          |  |

Violation Base Penalty \$600

Six single events are recommended for the six DMRs.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$1,722

This violation Final Assessed Penalty (adjusted for limits) \$1,722

## Economic Benefit Worksheet

**Respondent** City of Newark  
**Case ID No.** 904  
**Reg. Ent. Reference No.** RN102287984  
**Media** Water Quality  
**Violation No.** 3

| 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                |      |             |             | 0.0 | \$0 | \$0 | \$0 |
| Buildings                |      |             |             | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed)        |      |             |             | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction |      |             |             | 0.0 | \$0 | \$0 | \$0 |
| Land                     |      |             |             | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System    |      |             |             | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling        |      |             |             | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal     |      |             |             | 0.0 | \$0 | n/a | \$0 |
| Permit Costs             |      |             |             | 0.0 | \$0 | n/a | \$0 |
| Other (as needed)        | \$60 | 20-Mar-2006 | 29-May-2007 | 1.2 | \$4 | n/a | \$4 |

Notes for DELAYED costs

Estimated cost for the preparation and administrative costs associated with the submittal of monthly reports. Date required is when the (first) February 2006 report was due and the final date is when the six reports were received.

### Avoided Costs

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

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

Notes for AVOIDED costs

|                            |      |              |     |
|----------------------------|------|--------------|-----|
| Approx. Cost of Compliance | \$60 | <b>TOTAL</b> | \$4 |
|----------------------------|------|--------------|-----|

## Compliance History

|   |  |   |   |                   |
|---|--|---|---|-------------------|
| Customer/Respondent/Owner-Operator:   | CN600342091  | City of Newark                            | Classification: AVERAGE                   | Rating: 3.46      |
| Regulated Entity:   | RN102287984  | CITY OF NEWARK WASTEWATER TREATMENT PLANT | Classification: AVERAGE                   | Site Rating: 3.91 |
| ID Number(s):   | WASTEWATER   | PERMIT                                    |   | WQ0011626001      |
|   | WASTEWATER   | PERMIT                                    |   | TPDES0057231      |
|   | WASTEWATER LICENSING   | LICENSE                                   |   | WQ0011626001      |
| Location:   | E bank of Derrett Creek, S. of Newark Beach Rd. Bridge, about 850 ft. W. of the intersec. of Roger Rd. & Berke St. |   | Rating Date: 9/1/2006 Repeat Violator: NO |                   |
| TCEQ Region:  | REGION 04 - DFW METROPLEX  |   |   |                   |
| Date Compliance History Prepared:   | July 11, 2007  |   |   |                   |
| Agency Decision Requiring Compliance History:   | Enforcement  |   |   |                   |
| Compliance Period:  | July 11, 2002 to July 11, 2007   |   |   |                   |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History |  |   |   |                   |
| Name:   | Merrilee G. Hupp   | Phone:                                    | 512-239-4490                              |                   |

### 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: 10/24/2005   | ADMINORDER 2003-0014-MWD-E |
| Classification: Moderate   |                            |
| Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)<br>30 TAC Chapter 305, SubChapter F 305.125(1) |                            |
| Rqmt Prov: Not specified PERMIT  |                            |
| Description: Failure to comply with permitted effluent limits.                                     |                            |
| Classification: Minor  |                            |
| Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)<br>30 TAC Chapter 305, SubChapter F 305.125(1) |                            |
| Rqmt Prov: 11626-001 PERMIT  |                            |
| Description: Failure to comply with permitted effluent limits.                                     |                            |
- 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  | 10/07/2002 | (189039) |
| 2  | 10/07/2002 | (189045) |
| 3  | 10/07/2002 | (357325) |
| 4  | 10/07/2002 | (189048) |
| 5  | 05/07/2003 | (189051) |
| 6  | 05/07/2003 | (189054) |
| 7  | 05/07/2003 | (189057) |
| 8  | 05/07/2003 | (189060) |
| 9  | 05/07/2003 | (189026) |
| 10 | 05/07/2003 | (189029) |
| 11 | 05/07/2003 | (189034) |
| 12 | 07/14/2003 | (308576) |
| 13 | 07/14/2003 | (308577) |
| 14 | 04/05/2004 | (308575) |
| 15 | 04/05/2004 | (357320) |
| 16 | 06/01/2004 | (357326) |
| 17 | 06/01/2004 | (357327) |
| 18 | 06/01/2004 | (357328) |
| 19 | 06/01/2004 | (357329) |
| 20 | 06/01/2004 | (357330) |

21 06/01/2004 (357331)  
 22 06/03/2004 (357323)  
 23 06/03/2004 (357321)  
 24 06/24/2004 (274883)  
 25 07/08/2004 (357324)  
 26 09/07/2004 (292486)  
 27 12/20/2004 (384777)  
 28 12/20/2004 (384778)  
 29 12/30/2004 (384779)  
 30 12/30/2004 (384780)  
 31 03/01/2005 (371833)  
 32 05/20/2005 (380229)  
 33 02/24/2006 (473707)  
 34 04/10/2006 (501744)  
 35 04/10/2006 (501745)  
 36 04/10/2006 (501746)  
 37 04/10/2006 (501747)  
 38 08/04/2006 (524015)  
 39 08/04/2006 (524016)  
 40 08/07/2006 (524017)  
 41 08/21/2006 (508801)  
 42 12/18/2006 (549016)  
 43 12/18/2006 (549017)  
 44 12/18/2006 (549018)  
 45 05/22/2007 (556252)

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

Date: 07/31/2002 (189045)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 08/31/2002 (189048)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 09/30/2002 (189051)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 10/31/2002 (189054)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 11/30/2002 (189057)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 12/31/2002 (189060)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 01/31/2003 (189026)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 02/28/2003 (189029)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 03/31/2003 (189034)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 04/30/2003 (308576)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 05/31/2003 (308577)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 06/30/2003 (357326)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 07/31/2003 (357327)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 08/31/2003 (357328)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 09/30/2003 (357329)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 10/31/2003 (357330)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 02/29/2004 (357320)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 03/31/2004 (357321)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 05/31/2004 (357324)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 06/22/2004 (274883)  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 317 317.4(a)(5)

Description: Failure to maintain availability of standby generator or other alternate power source  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(11)(B)  
 30 TAC Chapter 305, SubChapter F 305.125(11)(C)[G]

Description: Failure to submit the 2003 Annual Sludge Report.  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to maintain complete sludge transporter trip tickets  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to maintain flow measuring device and accurate flow measurements  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to maintain adequate effluent limitations as required by permit  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to maintain DO minimum as stipulated by permit  
 Date: 06/30/2004 (384777)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 09/30/2004 (384778)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 10/31/2004 (384779)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 12/31/2004 (549018)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 02/28/2005 (549017)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 03/04/2005 (371833)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to adhere to Dissolved Oxygen permit limits  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(4)  
 30 TAC Chapter 305, SubChapter F 305.125(5)  
 TWC Chapter 26 26.121  
 TWC Chapter 26 26.121(a)(1)  
 TWC Chapter 26 26.121(a)(2)  
 TWC Chapter 26 26.121(a)(3)  
 TWC Chapter 26 26.121(a)[G]  
 TWC Chapter 26 26.121(b)  
 TWC Chapter 26 26.121(c)  
 TWC Chapter 26 26.121(d)  
 TWC Chapter 26 26.121(e)  
 TWC Chapter 26 26.121[G]

Description: Failure to prevent an unauthorized discharge from the bar screen and to properly mitigate the affected area.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 317 317.4(a)(8)

Description: Failure to provide an adequate backflow prevention device at the plant's main potable water service line.  
 Date: 03/31/2005 (501745)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 04/30/2005 (501746)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 12/31/2005 (501747)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 03/31/2006 (524015)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 05/31/2006 (524017)  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 06/30/2006  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)[G]

Description: Failure to meet the limit for one or more permit parameter  
 Date: 7/31/2006  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: TWC Chapter 26 26.121(a)[G]  
Failure to meet the limit for one or more permit parameter  
Date: 08/31/2006  
Self Report? YES Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
Description: Failure to meet the limit for one or more permit parameter

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

Date: 4/30/2007  
Self Report? YES Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26 26.121(a)[G]  
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 NEWARK;  
RN102287984**

§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2007-1065-MWD-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding City of Newark (“Newark”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Newark, represented by Jenny Gravley, of Taylor, Olson, Adkins, Sralla, & Elam, L.L.P., presented this agreement to the Commission.

Newark understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Newark agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon Newark.

The Commission makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. Newark owns and operates a wastewater treatment plant located on the east bank of Derrett Creek immediately south of the Newark Beach Road Bridge, approximately 850 feet west of the intersection of Rogers Road and Berke Street, Newark, Wise County, Texas (the “Facility”).

2. The Facility has discharged waste into or adjacent to any water in the state or has committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
3. During a record review conducted on July 5, 2007, TCEQ staff documented that Newark failed to comply with the permitted effluent limits for dissolved oxygen (“DO”), total suspended solids (“TSS”), and ammonia-nitrogen (“NH<sub>3</sub>-N”) as depicted in the Effluent Violation Table below:

Effluent Violation Table

| Effluent Characteristic |      | DO Minimum | Daily Average NH <sub>3</sub> -N Conc. | Daily Average TSS Conc. |
|-------------------------|------|------------|--|-------------------------|
| Units                   |      | (mg/L)     | (mg/L)                                 | (mg/L)                  |
| Permit Limit :          |      | 6.0        | 2.0                                    | 15.0                    |
| Month                   | Year |            |  |                         |
| December                | 2005 | c          | 2.43                                   | c                       |
| March                   | 2006 | c          | c                                      | 15.85                   |
| May                     | 2006 | 4.3        | c                                      | c                       |
| June                    | 2006 | 3.9        | c                                      | c                       |
| July                    | 2006 | 5.8        | c                                      | c                       |
| August                  | 2006 | 5.2        | c                                      | c                       |
| March                   | 2007 | 4.1        | c                                      | c                       |
| April                   | 2007 | 4.9        | c                                      | c                       |

c: compliant      TSS: total suspended solids    mg/L: milligrams per liter  
DO: dissolved oxygen      NH<sub>3</sub>-N: ammonia-nitrogen    Conc.: concentration

4. During a record review conducted on April 5, 2007, TCEQ staff documented that Newark:
  - a. failed to submit the annual sludge report for the period ending July 31, 2006; and
  - b. failed to timely submit Discharge Monthly Reports (“DMRs”) for February, September, October, November, and December 2006 as well as January 2007.
5. Newark received notice of the violations on or about July 10, 2007.

6. The Executive Director recognizes that Newark has implemented the following corrective measures at the Facility in response to this enforcement action:
  - a. Newark submitted the annual sludge report for the period ending July 31, 2006.
  - b. Newark submitted DMRs for February, September, October, November, and December 2006 as well as January 2007.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Newark is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE § 7.002 and ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Newark has violated 30 TEX. ADMIN. CODE § 305.125(1); TEX. WATER CODE § 26.121(a); TPDES Permit No. 11626001, Effluent Limitations and Monitoring Requirement Nos. 1 and 6; and TCEQ Agreed Order Docket No. 2003-0014-MWD-E by failing to comply with the permitted effluent limits for DO, TSS, and NH<sub>3</sub>-N as depicted in the Effluent Violation Table above.
3. As evidenced by Finding of Fact No. 4.a., Newark has violated 30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. 11626001, Sludge Provisions by failing to submit the annual sludge report for the period ending July 31, 2006.
4. As evidenced by Finding of Fact No. 4.b., Newark has violated 30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. 11626001, Monitoring and Reporting Requirements No. 1 by failing to timely submit DMRs for February, September, October, November, and December 2006 as well as January 2007.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Newark for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of twenty-one thousand eight hundred twelve dollars (\$21,812.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Twenty-one thousand eight hundred twelve dollars (\$21,812.00) shall be conditionally offset by the Newark's completion of a Supplemental Environmental Project. Newark'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.

### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Newark is assessed an administrative penalty in the amount of twenty-one thousand eight hundred twelve dollars (\$21,812.00) as set forth in Conclusion of Law No. 6 for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Newark's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Twenty-one thousand eight hundred twelve dollars (\$21,812.00) shall be conditionally offset by Newark's completion of a Supplemental Environmental Project ("SEP").
2. Newark shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Conclusion of Law No. 6, twenty-one thousand eight hundred twelve dollars (\$21,812.00) of the assessed administrative penalty shall be offset with the condition that Newark implement the SEP defined in Attachment A, incorporated herein by reference. Newark's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. Administrative penalty payments for any portion of the administrative penalty not offset by a Supplemental Environmental Project or for any portion of the Supplemental Environmental Project deemed by the Executive Director as not complete shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: City of Newark; Docket No. 2007-1065-MWD-E; Enforcement ID No. 904" 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

4. Newark shall undertake the following technical requirement:

Within 60 days after the effective date of this Agreed Order, Newark shall submit written certification of compliance with the effluent limits of TPDES Permit No. 11626001. 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 219  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

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

5. The provisions of this Agreed Order shall apply to and be binding upon Newark. Newark is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the facility operations referenced in this Agreed Order.
6. If Newark 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, Newark's failure to comply is not a violation of this Agreed Order. Newark has the burden of establishing to the Executive Director's satisfaction that such an

event has occurred. Newark shall notify the Executive Director within seven days after Newark becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

7. 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 Newark shall be made in writing to the Executive Director. Extensions are not effective until Newark receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Newark if the Executive Director determines that Newark has not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. This Agreed Order, issued by the Commission, shall not be admissible against Newark 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.
11. 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.
12. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date is the date of hand-delivery of the Order to Newark, or three days after the date on which the Commission mails notice of the Order to Newark, whichever is earlier.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*Robert Pennington*  
For the Executive Director

5/3/2009  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or its failure to timely pay the penalty amount, may result in:

- A negative impact on City of Newark's compliance history;
- Greater scrutiny of any permit applications submitted by City of Newark;
- 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 against City of Newark;
- Automatic referral to the Attorney General's Office of any future enforcement actions against City of Newark; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

*H.B. Malone*  
Signature

10-9-08  
Date

H.B. MALONE  
Name (printed or typed)  
Authorized representative of City of Newark

Mayer  
Title

Attachment A

Docket Number: 2007-1065-MWD-E

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** City of Newark

**Penalty Amount:** Twenty-one thousand eight hundred twelve dollars (\$21,812.00)

**SEP Offset Amount:** Twenty-one thousand eight hundred twelve dollars (\$21,812.00)

**Type of SEP:** Pre-approved

**Third-Party Recipient:** *Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")* Household Hazardous Waste Collection program

**Location of SEP:** Wise County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Offset 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

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be to the *Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")* for the Household Hazardous Waste ("HHW") Collection program, to be conducted within Wise County. Residents shall be allowed to bring household hazardous waste to a designated collection site for proper disposal. Specifically, SEP monies will pay for the labor and disposal costs associated with properly disposing of or recycling paint, thinners, pesticides, oil and gas, corrosive cleaners, fertilizers, electronics, and other wastes. Citizens will not be charged for the costs of this project. Any remaining SEP funds after completion of the HHW Collection event may, at the discretion of the TCEQ Executive Director, be spent on an RC&D Trash Dump Cleanup, Abandoned Tire Site Cleanup, Water or Wastewater Treatment Assistance, or other approved RC&D project to be conducted within Wise County. The project will be administered in accordance with TCEQ guidance on household hazardous waste and in compliance with federal, state, and local environmental laws and regulations.

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 providing for the proper disposal of debris, wastes, and tires that can leach chemicals into the soil, water, and air, as well as help rid the community of the dangers and health threats associated with non-regulated dumping.

The recycling portion of the event may include recycling of E-waste materials. E-waste materials include computers and related information technologies such as workstations, scanners, printers, hand-held diagnostic and screening tools, cell phones, servers, and televisions, among many others. Cathode ray tubes (“CRT”) are the picture tubes in computers, monitors and TVs. With the rapid evolution of technology, computers and TVs containing CRTs become obsolete in a short period of time and are simply discarded, often in landfills. A typical 17-inch CRT contains approximately two pounds of lead and larger CRTs may contain up to ten pounds of lead. E-waste can contain lead, mercury, cadmium, hexavalent chromium and brominated flame retardants.

This SEP will limit potentially toxic or hazardous E-waste from the waste stream destined for disposal or incineration and to divert the E-waste to environmentally friendly recycling. This will save valuable landfill capacity and allow the recycler to re-utilize E-waste components, including CRTs.

C. Minimum Expenditure

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

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall make one payment of \$2,612.00 to the Third-Party Recipient. Thereafter, Respondent shall make ten (10) monthly payments of \$1,920.00 to the Third-Party Recipient. Each payment shall be due by the fifteenth (15<sup>th</sup>) day of each month. Respondent shall mail a copy of the Agreed Order along with the initial contribution to:

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

**3. Records and Reporting**

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

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Offset 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 Offset Amount.

In the event of incomplete performance, the Respondent shall submit a check for any remaining amount due made payable to “Texas Commission on Environmental Quality” with the notation “SEP Refund” and the docket number of the case, and shall send it to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**5. Publicity**

Any public statements concerning this SEP made by or on behalf of 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**

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, 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 Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.