

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0237-MWD-E **TCEQ ID:** RN101609196 **CASE NO.:** 37175

RESPONDENT NAME: City of Pearland

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: Southwest Environmental Center WWTP, located approximately 0.25 mile east and 1.0 mile north of the intersection of County Road 101 (Bailey Road) and County Road 103 (Harkey Road), Pearland, Brazoria County</p> <p>TYPE OF OPERATION: Wastewater treatment plant.</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on July 6, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732 TCEQ Enforcement Coordinator: Mr. Thomas Jecha, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2576; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Ms. Jennifer Phan, Assistant Director of Public Works, City of Pearland, 3519 Liberty Drive, Pearland, Texas 77581-5416 Mr. Daniel A. Cameron, Director of Public Works, City of Pearland, 3519 Liberty Drive, Pearland, Texas 77581-5416 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: October 27, 2008</p> <p>Date of NOV/NOE Relating to this Case: February 13, 2009 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to comply with permitted effluent limitations for ammonia nitrogen, total suspended solids, fecal coliform bacteria, and carbonaceous biochemical oxygen demand [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010134007, Effluent Limitations and Monitoring Requirements No. 1].</p>	<p>Total Assessed: \$16,950</p> <p>Total Deferred: \$3,390 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$13,560</p> <p>Total Paid (Due) to General Revenue: \$0</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent started construction on a new wastewater treatment facility that is estimated to be completed and operating by August 1, 2009.</p> <p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to, within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010134007, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.</p>

Additional ID No(s): TPDES Permit No. WQ0010134007

Attachment A

Docket Number: 2009-0237-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Pearland
Payable Penalty Amount: Thirteen Thousand Five Hundred Sixty Dollars (\$13,560)
SEP Amount: Thirteen Thousand Five Hundred Sixty Dollars (\$13,560)
Type of SEP: Pre-approved
Third-Party Recipient: Brazoria County - Wastewater Treatment Assistance For Low-Income Homeowners
Location of SEP: Brazoria County

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

1. Project Description

A. Project

The Respondent will contribute to Brazoria County to provide assistance to low income homeowners to repair or replace failing or inadequately designed On-Site Sewage Facilities ("OSSFs") within the county. Many of the OSSFs currently in operation in Brazoria County are substandard and result in the release of sewage in residential areas, public rights-of-way, and waterways.

Brazoria County shall not charge homeowners for any portion of the cost of the project paid for by SEP funds.

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

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by preventing the continued release of raw sewage into the environment, which will protect ground, surface, and drinking water sources, and wildlife from contamination from sewage. Important aquatic areas in the Brazoria County area that are likely impacted by the release of sewage include the Brazos River Basin, Christmas Bay, Chocolate Bayou, and Bastrop Bayou.

C. Minimum Expenditure

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

2. Performance Schedule

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

Brazoria County Environmental Health Services
111 East Locust
Bldg A-29 Suite 270
Angleton, Texas 77515

3. Records and Reporting

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

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

4. Failure to Fully Perform

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

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

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

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

5. Publicity

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

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	17-Feb-2009	Screening	19-Feb-2009	EPA Due	5-Mar-2009
	PCW	20-Feb-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Pearland
Reg. Ent. Ref. No.	RN101609196
Facility/Site Region	12-Houston
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	37175	No. of Violations	1
Docket No.	2009-0237-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Thomas Jecha
		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 Enhancement for 24 self-reported monthly effluent violations, two NOVs with similar violations and two NOVs with dissimilar violations issued to this Facility within the past five years.

Culpability Enhancement **Subtotal 4**

Notes The Respondent does not meet the culpability criteria.

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

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts	\$6,722	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$50,000	

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 Recommended reduction to prevent double counting of self-reported violations.

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 Deferral offered for expedited settlement.

PAYABLE PENALTY

Screening Date 19-Feb-2009	Docket No. 2009-0237-MWD-E	PCW
Respondent City of Pearland		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 37175		<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No. RN101609196		
Media [Statute] Water Quality		
Enf. Coordinator Thomas Jecha		

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	26	130%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 134%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for 24 self-reported monthly effluent violations, two NOVs with similar violations and two NOVs with dissimilar violations issued to this Facility within the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 134%

Screening Date 19-Feb-2009	Docket No. 2009-0237-MWD-E	PCW
Respondent City of Pearland	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 37175	<small>PCW Revision October 30, 2008</small>	
Reg. Ent. Reference No. RN101609196		
Media [Statute] Water Quality		
Enf. Coordinator Thomas Jecha		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010134007, Effluent Limitations and Monitoring Requirements No. 1.	
Violation Description	Failed to comply with permitted effluent limitations as shown in the attached table.	

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm				
		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="25%"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
Matrix Notes	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

A simplified model was used to evaluate ammonia nitrogen and carbonaceous biochemical oxygen demand to determine whether the amount of discharged pollutants exceeded levels protective of human health or the environment. Flow, total suspended solids, and fecal coliform bacteria were also considered. As a result of this violation, human health or the environment has been exposed to insignificant amounts of pollutants which did not exceed protective levels.

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

Three quarterly events are recommended.

Good Faith Efforts to Comply

Reduction

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

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

Violation Subtotal

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 City of Pearland
Case ID No. 37175
Reg. Ent. Reference No. RN101609196
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$50,000	31-Aug-2007	1-Aug-2009	1.92	\$320	\$6,402	\$6,722
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to increase oxygen supplied to the sequential batch reactors to reduce ammonia nitrogen in the effluent to permitted limits. The date required is the date of the first effluent violation and the final date is the date the new plant is expected to be completed and operating.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$50,000

TOTAL

\$8,722

Effluent Limit Violation Table

table rev.

Respondent: **City of Pearland**

ID Number(s): **TPDES Permit No. WQ0010134007, Enf Id. 37175**

Docket Number: **2009-0237-MWD-E**

Off. Coordinator: **Thomas E. Jecha**

Corresponds to Violation Number: **1**

EFFLUENT PARAMETER

Permit Limit

Month/Year	NH3-N daily avg loading (lbs/day)	NH3-N daily avg conc (mg/l)	NH3-N daily max (mg/l)	TSS daily avg loading (lbs/day)	TSS daily avg conc (mg/l)	TSS daily max conc (mg/l)	FCB day avg (colonies/100 ml)	CBOD5 daily avg loading (lbs/day)	CBOD5 daily avg conc (mg/l)	CBOD5 daily max conc (mg/l)			
	33	2	12	200	12	40	400	83	5	20			
8/31/2007	42.33	3.49	22	c	c	c	c	c	c	c			
11/30/2007	c	c	c	c	c	c	544	c	c	c			
1/31/2008	c	c	c	274.7	13.49	81	c	126.40	6.9	33.3			
5/31/2008	c	c	19	c	c	c	c	c	c	c			
6/30/2008	43.1	3.8	15.6	c	c	42.5	500	c	5.2	c			
7/31/2008	34.61	3	16.6	c	c	c	c	c	c	c			

- mg/l = milligrams per liter
- lbs/day = pounds per day
- c = compliant
- CBOD5 = 5-day carbonaceous biochemical oxygen demand
- NH3-N = ammonia nitrogen
- FCB = fecal coliform bacteria
- TSS = total suspended solids

Compliance History Report

Customer/Respondent/Owner-Operator: CN600595052 City of Pearland Classification: AVERAGE Rating: 2.39
Regulated RN101609196 SOUTHWEST ENVIRONMENTAL Classification: AVERAGE Site Rating: 1.22
CENTER WWTP
ID Number(s): WASTEWATER PERMIT WQ0010134007
WASTEWATER PERMIT TX0116581
WASTEWATER EPA ID TX0116581
STORMWATER PERMIT TXR05V641
Location: approx 0.25 mi E and 1 mi N of the intersection of CR 101
(Bailey Rd) & CR 103 (Harkey Rd) in the City of Pearland in
Brazoria Co, Tx
TCEQ Region: REGION 12 - HOUSTON
Date Compliance History Prepared: February 18, 2009
Agency Decision Requiring Compliance Enforcement
Compliance Period: February 18, 2004 to February 18, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Thomas Jecha Phone: 239 - 2576

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
- 6 Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 02/18/2004 (325750)
 - 2 03/17/2004 (325752)
 - 3 04/26/2004 (325753)
 - 4 07/12/2004 (366070)
 - 5 07/12/2004 (366075)
 - 6 07/24/2004 (366069)
 - 7 07/28/2004 (333145)
 - 8 08/02/2004 (366068)
 - 9 08/24/2004 (366071)
 - 10 08/30/2004 (278439)
 - 11 09/21/2004 (366072)
 - 12 10/22/2004 (366073)
 - 13 11/23/2004 (366074)
 - 14 12/22/2004 (389550)

15	02/22/2005	(389548)
16	03/22/2005	(389549)
17	04/22/2005	(427091)
18	05/06/2005	(427094)
19	05/23/2005	(427092)
20	06/21/2005	(427093)
21	07/22/2005	(447224)
22	08/23/2005	(447225)
23	09/23/2005	(447226)
24	10/26/2005	(588699)
25	10/28/2005	(588705)
26	11/22/2005	(588701)
27	12/20/2005	(588703)
28	02/22/2006	(588686)
29	03/20/2006	(588688)
30	05/15/2006	(459842)
31	05/22/2006	(588692)
32	06/21/2006	(588694)
33	08/21/2006	(588697)
34	09/13/2006	(512109)
35	09/25/2006	(588698)
36	10/24/2006	(588700)
37	11/27/2006	(588702)
38	12/21/2006	(588704)
39	01/23/2007	(588706)
40	02/22/2007	(588687)
41	03/23/2007	(588689)
42	04/23/2007	(588690)
43	04/23/2007	(588691)
44	05/23/2007	(588693)
45	06/18/2007	(588695)
46	07/19/2007	(588696)
47	08/13/2007	(570946)
48	08/15/2007	(608601)
49	09/11/2007	(608602)
50	10/18/2007	(608603)
51	10/25/2007	(608604)
52	11/15/2007	(630391)
53	12/18/2007	(630392)
54	12/21/2007	(635972)
55	02/19/2008	(677005)
56	03/18/2008	(677006)
57	04/17/2008	(677007)
58	05/15/2008	(695622)
59	06/19/2008	(695623)
60	07/16/2008	(695624)
61	08/20/2008	(717169)
62	09/25/2008	(717170)
63	10/16/2008	(717171)
64	10/16/2008	(717172)
65	11/21/2008	(732544)
66	12/19/2008	(732545)
67	02/13/2009	(706566)

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

Date: 03/31/2004 (325753)

CN600595052

Self YES Classification Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter
Date: 05/31/2004 (366069) CN600595052
Self YES Classification Moderate
Report? :

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter
Date: 07/28/2004 (333145) CN600595052
Self Report? NO Classification Moderate
:

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)
Description: NON-RPT VIOS FOR MONIT PER OR PIPE
Date: 07/31/2004 (366071) CN600595052
Self Report? YES Classification Moderate
:

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter
Date: 08/30/2004 (278439) CN600595052
Self Report? NO Classification Moderate
:

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to maintain compliance with the permitted effluent limits for fecal coliform
daily average and fecal coliform daily max.
Date: 09/30/2004 (366073) CN600595052
Self Report? YES Classification Moderate
:

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter
Date: 11/30/2004 (389550) CN600595052
Self Report? YES Classification Moderate
:

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter
Date: 07/31/2005 (447225) CN600595052
Self Report? YES Classification Moderate
:

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter
Date: 12/31/2005 (588705) CN600595052
Self Report? YES Classification Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter
Date: 05/12/2006 (459842) CN600595052
Self Report? NO Classification Moderate
:

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to maintain compliance with the permitted effluent limits for fecal coliform
daily average and fecal coliform daily max.

Self Report?	NO	Classification	Moderate
:			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to conduct sludge analyses at the frequency required by the permit. The Toxicity Characteristic Leaching Procedure (TCLP) and metals analyses had not been conducted since 12/04. These analyses must be conducted annually.		
Self Report?	NO	Classification	Minor
:			
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) TPDES Part II, Section C(3) PERMIT		
Description:	Failure to certify the Storm Water Pollution Prevention Plan (SWP3).		
Self Report?	NO	Classification	Minor
:			
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) TPDES, Part III, Section A(3)(b) PERMIT		
Description:	Failure to investigate for potential non-storm water discharges (dry weather flows).		
Self Report?	NO	Classification	Minor
:			
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) TPDES, Part III, Section A(4)(c) PERMIT		
Description:	Failure to prepare a detailed site map.		
Self Report?	NO	Classification	Minor
:			
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) TPDES, Part III, Section A (5)(c) PERMIT		
Description:	Failure to address erosion control measures and evaluate soil stabilization through vegetative cover, contouring slopes, paving, and installation of structural controls.		
Self Report?	NO	Classification	Moderate
:			
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) TPDES Part III, Section A(5)(g) PERMIT		
Description:	Failure to conduct the quarterly periodic inspections since April 2004.		
Self Report?	NO	Classification	Moderate
:			
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) TPDES Part III, Section A(7)(b) PERMIT		
Description:	Failure to conduct the 2005 annual comprehensive site compliance evaluation.		
Date:	06/30/2006 (447224)	CN600595052	
Self Report?	YES	Classification	Moderate
:			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	07/31/2006 (588697)	CN600595052	
Self Report?	YES	Classification	Moderate
:			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	08/31/2006 (588698)	CN600595052	
Self Report?	YES	Classification	Moderate
:			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	10/31/2006 (588702)	CN600595052	
Self Report?	YES	Classification	Moderate
:			
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		

Date:	01/31/2007	(588687)	CN600595052		
Self Report?	YES			Classification	Moderate
:					
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)				
	TWC Chapter 26 26.121(a)				
Description:	Failure to meet the limit for one or more permit parameter				
Date:	02/28/2007	(588689)	CN600595052		
Self Report?	YES			Classification	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)				
	TWC Chapter 26 26.121(a)				
Description:	Failure to meet the limit for one or more permit parameter				
Date:	08/31/2007	(608602)	CN600595052		
Self Report?	YES			Classification	Moderate
:					
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)				
	30 TAC Chapter 305, SubChapter F 305.125(1)				
Description:	Failure to meet the limit for one or more permit parameter				
Date:	11/30/2007	(630392)	CN600595052		
Self Report?	YES			Classification	Moderate
:					
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)				
	30 TAC Chapter 305, SubChapter F 305.125(1)				
Description:	Failure to meet the limit for one or more permit parameter				
Date:	12/21/2007	(635972)	CN600595052		
Self Report?	NO			Classification	Moderate
:					
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)				
	30 TAC Chapter 305, SubChapter F 305.125(17)				
Description:	NON-RPT VIOS FOR MONIT PER OR PIPE				
Date:	01/31/2008	(677005)	CN600595052		
Self Report?	YES			Classification	Moderate
:					
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)				
	30 TAC Chapter 305, SubChapter F 305.125(1)				
Description:	Failure to meet the limit for one or more permit parameter				
Date:	05/31/2008	(695623)	CN600595052		
Self Report?	YES			Classification	Moderate
:					
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)				
	30 TAC Chapter 305, SubChapter F 305.125(1)				
Description:	Failure to meet the limit for one or more permit parameter				
Date:	06/30/2008	(695624)	CN600595052		
Self Report?	YES			Classification	Moderate
:					
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)				
	30 TAC Chapter 305, SubChapter F 305.125(1)				
Description:	Failure to meet the limit for one or more permit parameter				
Date:	07/31/2008	(717169)	CN600595052		
Self Report?	YES			Classification	Moderate
:					
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)				
	30 TAC Chapter 305, SubChapter F 305.125(1)				
Description:	Failure to meet the limit for one or more permit parameter				
Date:	08/31/2008	(717170)	CN600595052		
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: 09/30/2008

Self Report? YES

Classification Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)

30 TAC Chapter 305, SubChapter F 305.125(1)

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

Date: 10/31/2008 (732544)

CN600595052

Self Report? YES

Classification Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)

30 TAC Chapter 305, SubChapter F 305.125(1)

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

Date: 11/30/2008 (732545)

CN600595052

Self Report? YES

Classification Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)

30 TAC Chapter 305, SubChapter F 305.125(1)

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

Date: 12/31/2008 (717172)

CN600595052

Self Report? YES

Classification Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)

30 TAC Chapter 305, SubChapter F 305.125(1)

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

F. Environmental audits

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF PEARLAND
RN101609196

§ BEFORE THE
§ TEXAS COMMISSION ON
§ ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-0237-MWD-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Pearland ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a wastewater treatment plant located approximately 0.25 mile east and 1.0 mile north of the intersection of County Road 101 (Bailey Road) and County Road 103 (Harkey Road) in the City of Pearland, Brazoria County, Texas (the "Facility").
2. The City has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about February 18, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Sixteen Thousand Nine Hundred Fifty Dollars (\$16,950) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Three Thousand Three Hundred Ninety Dollars (\$3,390) is deferred contingent

upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty. Thirteen Thousand Five Hundred Sixty Dollars (\$13,560) shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the City started construction on a new wastewater treatment facility that is estimated to be completed and operating by August 1, 2009.
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 City 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 City is alleged to have failed to comply with permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010134007, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on October 27, 2008 and shown in the table below:

Month/Year	NH3-N daily avg loading (lbs/day)	NH3-N daily avg conc (mg/l)	NH3-N daily max (mg/l)	TSS daily avg loading (lbs/day)	TSS daily avg conc (mg/l)	TSS daily max conc (mg/l)	FCB 7-day avg (colonies/100.ml)	CBOD5 daily avg loading (lbs/day)	CBOD5 daily avg conc (mg/l)	CBOD5 daily max conc (mg/l)
8/31/2007	33	2	12	200	12	40	400	83	5	20
8/31/2007	42.33	3.49	22	c	c	c	c	c	c	c
11/30/2007	c	c	c	c	c	c	544	c	c	c
1/31/2008	c	c	c	274.7	13.49	81	c	126.40	6.9	33.3
5/31/2008	c	c	19	c	c	c	c	c	c	c
6/30/2008	43.1	3.8	15.6	101.7	c	42.5	500	c	5.2	c
7/31/2008	34.61	3	16.6	c	c	c	c	c	c	c

NH3-N = Ammonia Nitrogen, TSS = total suspended solids, CBOD5 = 5-day carbonaceous biochemical oxygen demand, lbs/day = pounds per day, mg/l = milligrams per liter, c = compliant

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Pearland, Docket No. 2009-0237-MWD-E" to:

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

2. The City shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Thirteen Thousand Five Hundred Sixty Dollars (\$13,560) of the assessed administrative penalty shall be offset with the condition that the City implement the SEP defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the City shall, within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010134007, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

4. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

Date 6/3/2009

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 5/2/09

DANIEL A. CAMERON

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

Director of Public Works

Title

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

Attachment A
Docket Number: 2009-0237-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Pearland
Payable Penalty Amount: Thirteen Thousand Five Hundred Sixty Dollars (\$13,560)
SEP Amount: Thirteen Thousand Five Hundred Sixty Dollars (\$13,560)
Type of SEP: Pre-approved
Third-Party Recipient: Brazoria County - Wastewater Treatment Assistance For Low-Income Homeowners
Location of SEP: Brazoria County

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

1. Project Description

A. Project

The Respondent will contribute to Brazoria County to provide assistance to low income homeowners to repair or replace failing or inadequately designed On-Site Sewage Facilities ("OSSFs") within the county. Many of the OSSFs currently in operation in Brazoria County are substandard and result in the release of sewage in residential areas, public rights-of-way, and waterways.

Brazoria County shall not charge homeowners for any portion of the cost of the project paid for by SEP funds.

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

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by preventing the continued release of raw sewage into the environment, which will protect ground, surface, and drinking water sources, and wildlife from contamination from sewage. Important aquatic areas in the Brazoria County area that are likely impacted by the release of sewage include the Brazos River Basin, Christmas Bay, Chocolate Bayou, and Bastrop Bayou.

C. Minimum Expenditure

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

2. Performance Schedule

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

Brazoria County Environmental Health Services
111 East Locust
Bldg A-29 Suite 270
Angleton, Texas 77515

3. Records and Reporting

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

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

4. Failure to Fully Perform

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

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

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

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

5. Publicity

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

6. Clean Texas Program

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

7. Other SEPs by TCEQ or Other Agencies

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

