

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0546-MLM-E **TCEQ ID:** RN104191200 and RN101387231 **CASE NO.:** 37478

RESPONDENT NAME: City of Brady

ORDER TYPE:		
<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	
CASE TYPE:		
<input type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Brady Water System ("Facility 1") and City of Brady WTP ("Facility 2"), located approximately 3/4 mile south of Brady Lake on Farm-to-Market Road 3022, approximately 2.5 miles west of Brady in McCulloch County</p> <p>TYPE OF OPERATION: Public water supply and water 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 September 7, 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: Ms. Merrilee Hupp, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4490; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: The Honorable James Stewart, Mayor, City of Brady, P.O. Box 351, Brady, Texas 76825-0351 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 checked="" 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: February 3 and April 20, 2009</p> <p>Date of NOV/NOE Relating to this Case: March 30 and April 19, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation and a record review.</p> <p>WATER</p> <p>1) Failure to prevent an unauthorized discharge of water treatment wastewater into or adjacent to water in the state. Specifically, a hole was cut through the embankment of the water treatment plant backwash pond, allowing approximately 450,000 gallons of backwash wastewater to flow over a pasture into a borrow ditch, into a concrete culvert located beneath Ranch Road 3022 and then into an unnamed draw that feeds Brady Creek Reservoir (Brady Lake) [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(4) and (5), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0004712000, Permit Conditions No. 2.g. and Operational Requirements No. 1].</p> <p>2) Failure to notify appropriate local government officials and the local media as quickly as possible, but not later than 24 hours after becoming aware of an unauthorized discharge of 100,000 gallons or more from the Facility. Specifically, the Respondent was aware of the unauthorized discharge of approximately 450,000 gallons of backwash wastewater at 11:30 a.m. on February 3, 2009, but did not report to the local media until February 5, 2009 at 1:51 p.m. [30 TEX. ADMIN. CODE § 319.302(b)(3) and (c)].</p>	<p>Total Assessed: \$3,775</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$3,775</p> <p>Total Paid (Due) to General Revenue: \$0</p> <p>RN101387231 Site Compliance History Classification <input type="checkbox"/> High <input 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>RN104191200 Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification: The Respondent has three repeated enforcement actions over the prior five year period for the same violation.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that by February 4, 2009, the Respondent began backfilling the excavated cut in the embankment wall and rerouted the backwash wastewater with the addition of 110 feet of 2-inch pipe, a meter, and a tap to stop the unauthorized discharge from the backwash pond and prevent future overflows from the backwash pond.</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:</p> <p>a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that reporting requirements for unauthorized discharges are properly accomplished;</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.;</p> <p>c. Within 365 days after the effective date of this Agreed Order, return to compliance with the running annual average MCL for TTHM; and</p> <p>d. Within 380 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision 2.c.</p>

<p>3) Failure to comply with the maximum contaminant level of 0.080 milligrams per liter ("mg/L") for total trihalomethanes ("TTHM"), based on a running annual average. Specifically, the running annual average concentrations for TTHM were 0.152 mg/L for the third quarter of 2008, 0.162 mg/L for the fourth quarter of 2008, and 0.150 mg/L for the first quarter of 2009 [30 TEX. ADMIN. CODE § 290.113(f)(4) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].</p>		
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Additional ID No(s): 1540001

Attachment A
Docket Number: 2009-0546-MLM-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Brady

Payable Penalty Amount: Three Thousand Seven Hundred Seventy-Five Dollars (\$3,775)

SEP Amount: Three Thousand Seven Hundred Seventy-Five Dollars (\$3,775)

Type of SEP: Pre-approved

Third-Party Recipient: Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")-Abandoned Tire Clean-Up

Location of SEP: McCulloch County

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

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to clean-up sites where tires have been disposed of illegally. Eligible sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping. SEP monies will be used to pay for the direct cost of collecting and disposing of tires. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

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 providing for the proper disposal of tires and by reducing health threats associated with illegally dumped tires. Illegal tire dumpsites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of surface water, ground water, and soil.

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:

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

3. Records and Reporting

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

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

4. Failure to Fully Perform

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

The check for any amount due shall be made out to "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.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	4-May-2009	Screening	13-May-2009	EPA Due	
	PCW	13-May-2009				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Brady		
Reg. Ent. Ref. No.	RN101387231		
Facility/Site Region	8-San Angelo	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	37478	No. of Violations	1
Docket No.	2009-0546-MLM-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Merrilee Hupp
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **41.0%** Enhancement **Subtotals 2, 3, & 7** \$205

Notes: The penalty enhancement is due to three prior Notices of Violation ("NOV"s) for violations that are the same as or similar to the violations in the current enforcement action and 13 prior NOV's without the same or similar violations.

Culpability **Yes** **25.0%** Enhancement **Subtotal 4** \$125

Notes: The Respondent was issued alert letters for total trihalomethanes exceedances on October 17, 2007, February 1, 2008, and March 27, 2008.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** \$0Economic Benefit **0.0%** Enhancement* **Subtotal 6** \$0

Total EB Amounts \$565
Approx. Cost of Compliance \$5,000
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$830OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$830STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$830DEFERRAL **0.0%** Reduction Adjustment \$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.

PAYABLE PENALTY \$830

Screening Date 13-May-2009

Docket No. 2009-0546-MLM-E

PCW

Respondent City of Brady

Policy Revision 2 (September 2002)

Case ID No. 37478

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101387231

Media [Statute] Public Water Supply

Enf. Coordinator Merrilee Hupp

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component Number of... Enter Number Here Adjust.

NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)	3	15%
	Other written NOV's	13	26%
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	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 41%

>> Repeat Violator (Subtotal 3)

N/A

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 penalty enhancement is due to three prior Notices of Violation ("NOV"s) for violations that are the same as or similar to the violations in the current enforcement action and 13 prior NOV's without the same or similar violations.
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Total Adjustment Percentage (Subtotals 2, 3, & 7) 41%

Screening Date 13-May-2009 Respondent City of Brady Case ID No. 37478 Reg. Ent. Reference No. RN101387231 Media [Statute] Public Water Supply Enf. Coordinator Merrilee Hupp Violation Number <input type="text" value="1"/>	Docket No. 2009-0546-MLM-E PCW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision October 30, 2008</i>																														
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<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:50%; text-align: center;"> Estimated EB Amount </td> <td style="width:50%; text-align: center;"> Statutory Limit Test </td> </tr> <tr> <td style="text-align: center;"><input type="text" value="\$565"/></td> <td style="text-align: center;"><input type="text" value="\$830"/></td> </tr> <tr> <td colspan="2" style="text-align: center;"> This violation Final Assessed Penalty (adjusted for limits) </td> </tr> <tr> <td colspan="2" style="text-align: center;"><input type="text" value="\$830"/></td> </tr> </table>		Estimated EB Amount	Statutory Limit Test	<input type="text" value="\$565"/>	<input type="text" value="\$830"/>	This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$830"/>																							
Estimated EB Amount	Statutory Limit Test																														
<input type="text" value="\$565"/>	<input type="text" value="\$830"/>																														
This violation Final Assessed Penalty (adjusted for limits)																															
<input type="text" value="\$830"/>																															

Economic Benefit Worksheet

Respondent City of Brady
Case ID No. 37478
Reg. Ent. Reference No. RN101387231
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	28-Aug-2008	1-Dec-2010	2.26	\$565	n/a	\$565

Notes for DELAYED costs
 The delayed cost includes the amount to implement an alternate disinfection method to reduce or eliminate the TTHM levels, calculated from the initial quarter of noncompliance, to the estimated date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$5,000 TOTAL \$565

Compliance History Report

Customer/Respondent/Owner-Operator: CN600249866 City of Brady Classification: AVERAGE Rating: 9.00
Regulated Entity: RN101387231 CITY OF BRADY WATER SYSTEM Classification: Site Rating:
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1540001
WATER LICENSING LICENSE 1540001
Location: APPROX 3/4 MI S. OF BRADY LAKE ON FM
ROAD 3022, APPROX. 2.5 MI. W. OF BRADY, MCCULLOCH CO., TX
TCEQ Region: REGION 08 - SAN ANGELO
Date Compliance History Prepared: May 13, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: May 13, 2004 to May 13, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Merrilee G. Hupp Phone: 512-239 - 1000

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator 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.
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 08/05/2004 (396858)
- 2 08/05/2004 (517339)
- 3 08/05/2004 (517351)
- 4 08/05/2004 (517354)
- 5 06/14/2005 (394626)
- 6 09/26/2005 (517355)
- 7 09/26/2005 (517356)
- 8 02/01/2006 (453367)
- 9 03/16/2006 (459181)
- 10 06/19/2006 (482617)
- 11 06/26/2006 (517358)
- 12 06/26/2006 (517361)
- 13 10/30/2006 (513179)
- 14 11/21/2006 (531379)
- 15 01/08/2007 (535787)
- 16 02/07/2007 (538210)
- 17 02/27/2007 (541777)
- 18 06/04/2007 (562523)
- 19 10/31/2008 (706100)
- 20 11/21/2008 (742632)
- 21 12/02/2008 (709521)
- 22 01/23/2009 (742799)
- 23 03/04/2009 (737423)
- 24 03/30/2009 (742809)
- 25 04/24/2009 (741381)

26 04/29/2009 (743409)

27 05/05/2009 (744444)

28 05/07/2009 (744608)

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

Date: 08/05/2004 (396858) CN600249866

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.108(b)(1)(A)

30 TAC Chapter 290, SubChapter F 290.108(f)(1)

5A THC Chapter 341, SubChapter A 341.0315(c)

Description: failed to comply with the average annual combined gross Radium-226 and Radium-228 activity MCL of 5 pCi/L during 2002, 2003, 2004, and 2005; This violation includes tracking nos 256647, 256651, and 256656.

Date: 08/05/2004 (517354) CN600249866

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.108(F)(1)

Description: System violated the maximum contaminant level for combined radium 226 and 228 based on a temporal average for the one-year period of 2003.

Date: 08/05/2004 (517339) CN600249866

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.108(b)(1)(B)

30 TAC Chapter 290, SubChapter F 290.108(f)(1)

5A THC Chapter 341, SubChapter A 341.0315(c)

Description: failed to comply with the average annual MCL for gross alpha particle activity of 15 pico-Curie per liter ("pCi/L") during 2002, 2003, 2004, and 2005; this violation includes tracking Nos 256643, 256649, and 256653.

Date: 08/05/2004 (517351) CN600249866

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.108(F)(1)

Description: System violated the maximum contaminant level for gross alpha particle activity based on a temporal average for the one-year period of 2003.

Date: 06/14/2005 (394626) CN600249866

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)

Description: Failure to provide the proper slope for the roof of the #4 below ground storage tank.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(6)

Description: Failure to maintain a storage tank thoroughly tight against leakage.

Date: 09/26/2005 (517355) CN600249866

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.108(F)(1)

Description: System violated the maximum contaminant level for gross alpha particle activity based on a temporal average for the one-year period of 2004.

Date: 09/26/2005 (517356) CN600249866

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.108(F)(1)

Description: System violated the maximum contaminant level for combined radium 226 and 228 based on a temporal average for the one-year period of 2004.

Date: 06/26/2006 (517361) CN600249866

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.108(F)(1)

Description: System violated the maximum contaminant level for combined radium 226 and 228 based on a temporal average for the one-year period of 2005.

Date: 06/26/2006 (517358) CN600249866

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.108(F)(1)

Description: System violated the maximum contaminant level for gross alpha particle activity based on a temporal average for the one-year period of 2005.

Date: 10/30/2006 (513179) CN600249866

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(6)

Description: Failure to maintain a storage tank thoroughly tight against leakage.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(5)

Description: Failure to provide meters for the water lines between the Surface Water Treatment Plant and the pump stations.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)

Description: Failure to provide an intruder resistant fence at the Well 7 station.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.43(e)

Description: Failure to lock a gate on the fence at the tank battery.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(2)

Description: Failure to inspect the pressure tanks annually.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(t)

Description: Failure to provide an ownership sign for the facilities at the new surface water treatment plant.

Date: 10/31/2008 (706100) CN600249866

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)

30 TAC Chapter 290, SubChapter D 290.43(e)

Description: Failure to provide an intruder resistant fence at the Well 7 station, and to lock two gates on the fence around the 1 MG ground storage tank.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(e)(2)(C)

Description: Failure to provide a clearly marked 200-foot restriction zone at the Brady Lake intake.

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.42(f)(1)(E)(ii)

Description: Failure to provide secondary containment for a tank of descaler and for eight other chemical barrels at the surface water treatment plant.

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.42(f)(1)(E)(ii)(IV)

Description: Failure to store incompatible chemicals in separate secondary containers.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(1)

Description: Failure to calibrate flow meters.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(3)

Description: Failure to maintain the overflow on the 1 MG ground storage tank.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(4)

Description: Failure to provide water level indicators that read in feet for the 1 MG ground storage tank and for the ground storage tank at Wells 6 and 8.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(8)

Description: Failure to maintain the external coating on the 4000 gallon pressure tank at Well 7 station.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(B)(i)

Description: Failure to restandardize the secondary turbidity standards every 90 days.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(t)

Description: Failure to provide an ownership sign at the three raw water pumps.

Date: 11/21/2008 (742632) CN600249866

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)

5A THSC Chapter 341, SubChapter A 341.0315(c)

Description: Violated the maximum contaminant level for trihalomethanes during the third quarter of 2008.

Date: 01/23/2009 (742799) CN600249866

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)

5A THSC Chapter 341, SubChapter A 341.0315(c)

Description: Violated the maximum contaminant level for trihalomethanes during the fourth quarter of 2008.

Date: 03/19/2009 (738677) CN600249866

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 290, SubChapter F 290.111(d)(2)(B)

Description: Failure to adhere to the disinfection contact time that was based on tracer study data (the "CT Study").

Date: 03/30/2009 (742809) CN600249866

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)

5A THSC Chapter 341, SubChapter A 341.0315(c)

Description: Violated the maximum contaminant level for trihalomethanes during the first quarter of 2009.

Date: 04/24/2009 (741381) CN600249866

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(n)(1)

Description: Failure to maintain accurate and up-to-date, detailed, as-built plans or record drawings and specifications for each treatment plant, pump station, and storage tank.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.111(d)(2)(B)

Description: Failure to follow the approved CT Study.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.39(i)

Description: Failure to submit changes in plans, or failure to follow approved plans.

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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	6-Apr-2009	Screening	14-Apr-2009	EPA Due	
	PCW	14-Apr-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Brady
Reg. Ent. Ref. No.	RN104191200
Facility/Site Region	8-San Angelo
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37478	No. of Violations	2
Docket No.	2009-0546-MLM-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Merrilee Hupp
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

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

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts
 Approx. Cost of Compliance
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 14-Apr-2009

Docket No. 2009-0546-MLM-E

PCW

Respondent City of Brady

Policy Revision 2 (September 2002)

Case ID No. 37478

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104191200

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)	0	0%
	Other written NOVs	1	2%
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	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 2%

>> 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 received one NOV without same or similar violations to the violations in the current enforcement action.

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

Screening Date 14-Apr-2009 **Docket No.** 2009-0546-MLM-E **PCW**
Respondent City of Brady *Policy Revision 2 (September 2002)*
Case ID No. 37478 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN104191200
Media [Statute] Water Quality
Enf. Coordinator Merrilee Hupp
Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(4) and (5), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0004712000, Permit Conditions No. 2.g. and Operational Requirements No. 1

Violation Description Failed to prevent an unauthorized discharge of water treatment backwash wastewater into or adjacent to water in the state, as documented during an investigation conducted on February 3, 2009. Specifically, a hole was cut through the embankment of the water treatment plant backwash pond, allowing approximately 450,000 gallons of backwash wastewater to flow over a pasture into a borrow ditch, into a concrete culvert located beneath Ranch Road 3022 and then into an unnamed draw that feeds Brady Creek Reservoir (Brady Lake).

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual		x		25%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 1 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,500

One monthly event is recommended from the date the unauthorized discharge began (February 3, 2009) to the date of compliance (February 4, 2009).

Good Faith Efforts to Comply

25.0% Reduction \$625

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes The Respondent began backfilling the excavated cut in the embankment wall to stop the discharge by February 4, 2009.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,925

This violation Final Assessed Penalty (adjusted for limits) \$1,925

Economic Benefit Worksheet

Respondent City of Brady
Case ID No. 37478
Reg. Ent. Reference No. RN104191200
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$2,000	3-Feb-2009	4-Feb-2009	0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for filling in the excavated cut in the embankment wall with backfill and rerouting backwash wastewater to the evaporation pond with the addition of 110 feet of 2-inch pipe, a meter, and a tap to prevent unauthorized discharges from the backwash pond. Date required is the start date of the unauthorized discharge, and the final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

TOTAL

\$0

<p>Screening Date 14-Apr-2009 Respondent City of Brady Case ID No. 37478 Reg. Ent. Reference No. RN104191200 Media [Statute] Water Quality Enf. Coordinator Merrilee Hupp Violation Number <input type="text" value="2"/> Rule Cite(s) <input type="text" value="30 Tex. Admin. Code § 319.302(b)(3) and (c)"/></p>	<p>Docket No. 2009-0546-MLM-E PCW <small>Policy Revision 2 (September 2002) PCW Revision October 30, 2008</small></p>																																			
<p>Violation Description <input type="text" value="Failed to notify appropriate local government officials and the local media as quickly as possible, but not later than 24 hours after becoming aware of the unauthorized discharge of 100,000 gallons or more of wastewater into or adjacent to water in the state. Specifically, the Respondent was aware of the unauthorized discharge of approximately 450,000 gallons of backwash wastewater at 11:30 a.m. on February 3, 2009, but did not report to the local media until February 5, 2009 at 1:51 p.m."/></p>																																				
<p>Base Penalty <input type="text" value="\$10,000"/></p>																																				
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<p>Economic Benefit (EB) for this violation Statutory Limit Test</p> <p>Estimated EB Amount <input type="text" value="\$10"/> Violation Final Penalty Total <input type="text" value="\$1,020"/></p> <p style="text-align: right;">This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,020"/></p>																																				

Economic Benefit Worksheet

Respondent City of Brady
Case ID No. 37478
Reg. Ent. Reference No. RN104191200
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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$250	4-Feb-2009	15-Nov-2009	0.78	\$10	n/a	\$10
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 update operational guidance and conduct employee training to ensure noncompliance reporting procedures are properly accomplished. Date Required is the date the oral or facsimiled report was due. Final Date is the expected date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$250 **TOTAL** \$10

Compliance History Report

Customer/Respondent/Owner-Operator: CN600249866 City of Brady Classification: AVERAGE Rating: 9.00
Regulated Entity: RN104191200 CITY OF BRADY WTP Classification: AVERAGE Site Rating: 4.00
ID Number(s): WASTEWATER PERMIT WQ0004712000
Location: APPROX 3/4 MI S. OF BRADY LAKE ON FM
ROAD 3022, APPROX. 2.5 MI. W. OF BRADY, MCCULLOCH CO., TX.
TCEQ Region: REGION 08 - SAN ANGELO
Date Compliance History Prepared: April 13, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: April 13, 2004 to April 13, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Merrilee Hupp Phone: 239 - 4490

Site Compliance History Components

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

Components (Multimedia) for the Site :

6. Rating Date: 9/1/2008 Repeat Violator: NO
- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 02/28/2008 (615507)

2 04/24/2008 (653654)

3 06/11/2008 (682743)

4 04/02/2009 (740814)

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

Date: 02/28/2008 (615507) CN600249866

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

PPV PERMIT

PPVI PERMIT

Description: Failure to maintain and make available a copy of the certification of the lining specifications for the evaporation pond during the inspection.

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 319, SubChapter A 319.4

PPIV PERMIT

PPV PERMIT

PPVI PERMIT

Description: Failure to monitor effluent for the parameters listed in permit.

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 319, SubChapter A 319.5(b)

PPIV PERMIT

PPVI PERMIT

Description: Failure to monitor the wastewater effluent at the required frequency/intervals as identified in the permit.

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

PPV PERMIT

Description: Failure to notify the TCEQ Region 8 Office upon completion of construction of the pond at least a week prior to its use.

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 BRADY
RN101387231; RN104191200

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

**AGREED ORDER
DOCKET NO. 2009-0546-MLM-E**

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 Brady ("the City") under the authority of TEX. HEALTH & SAFETY CODE ch. 341 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City presented this agreement to the Commission.

The City 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, the City agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement 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 the City.

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

I. FINDINGS OF FACT

1. The City owns and operates a public water supply located approximately 3/4 mile south of Brady Lake on Farm-to-Market Road 3022, approximately 2.5 miles west of Brady in McCulloch County, Texas ("Facility 1") that has approximately 3,160 retail service connections and 454 wholesale service connections and serves at least 25 people per day for at least 60 days per year.

2. The City owns and operates a water treatment plant with an evaporation pond used to store water treatment wastewater located approximately 3/4 mile south of Brady Lake on Farm-to-Market Road 3022, approximately 2.5 miles west of Brady in McCulloch County, Texas (the "Facility 2").
3. The City has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
4. During an investigation conducted on February 3, 2009, TCEQ San Angelo Regional staff documented an unauthorized discharge of backwash wastewater at Facility 2. Specifically, a hole had been cut through the embankment of the water treatment plant backwash pond, allowing approximately 450,000 gallons of water treatment wastewater to flow across a pasture, into a borrow ditch, and then into a concrete culvert located beneath Ranch Road 3022 and into an unnamed draw that feeds Brady Creek Reservoir (Brady Lake). Samples collected during the investigation revealed concentrations of chloride, total dissolved solids, and sulfate about twice the levels historically measured in Brady Lake between October 2005 and June 2008.
5. During an investigation conducted on February 3, 2009, TCEQ San Angelo Regional staff documented that no notice had been provided to the local government officials and local media regarding the unauthorized discharge of 450,000 gallons of backwash wastewater which occurred at approximately 11:30 a.m. on February 3, 2009 at Facility 2. The facsimile was not sent by the City until February 5, 2009, 1:51 p.m. to the local newspaper.
6. During a record review on April 20, 2009, TCEQ staff documented that the City did not comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for total trihalomethanes ("TTHM") at Facility 1, based on a running annual average. Specifically, the running annual average concentrations for TTHM were 0.152 mg/L for the third quarter of 2008, 0.162 for the fourth quarter of 2008, and 0.150 mg/L for the first quarter of 2009.
7. The City received notices of the violations on April 4, 2009 and April 24, 2009.
8. The Executive Director recognizes that by February 4, 2009, the City began backfilling the excavated cut in the embankment wall and rerouted the backwash wastewater with the addition of 110 feet of 2-inch pipe, a meter, and a tap to stop the unauthorized discharge from the backwash pond and prevent future overflows from the backwash pond.

II. CONCLUSIONS OF LAW

1. The City is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341, TEX. WATER CODE chs. 7 and 26, and the rules of the Commission.
2. As evidenced by Findings of Fact No. 4 the City failed to prevent an unauthorized discharge of water treatment wastewater into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(4) and (5), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0004712000, Permit Conditions No. 2.g. and Operational Requirements No. 1.

3. As evidenced by Findings of Fact No. 5, the City failed to notify appropriate local government officials and the local media as quickly as possible, but not later than 24 hours after becoming aware of an unauthorized discharge of 100,000 gallons or more from the Facility, in violation of 30 TEX. ADMIN. CODE § 319.302(b)(3) and (c)
4. As evidenced by Findings of Fact No. 6, the City failed to comply with the MCL of 0.080 mg/L for TTHM, based on a running annual average, in violation of 30 TEX. ADMIN. CODE § 290.113(f)(4) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
5. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the City 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 Three Thousand Seven Hundred Seventy-Five Dollars (\$3,775) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b) and TEX. WATER CODE § 7.053. Three Thousand Seven Hundred Seventy-Five Dollars (\$3,775) shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP")."

III. ORDERING PROVISIONS

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

1. The City is assessed an administrative penalty in the amount of Three Thousand Seven Hundred Seventy-Five Dollars (\$3,775) as set forth in Section II, Paragraph 6, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the City'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. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Brady, Docket No. 2009-0546-MLM-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 II, Paragraph 6 above, Three Thousand Seven Hundred Seventy-Five Dollars (\$3,775) 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. The City shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that reporting requirements for unauthorized discharges are properly accomplished, in accordance with 30 TEX. ADMIN. CODE § 319.302;
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a. 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 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 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
San Angelo Regional Office
Texas Commission on Environmental Quality
622 South Oakes, Suite K
San Angelo, Texas 76903-7013

- c. Within 365 days after the effective date of this Agreed Order, return to compliance with the running annual average MCL for TTHM, in accordance with 30 TEX. ADMIN. CODE § 290.113; and
- d. Within 380 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision 3.c. as described in Ordering Provision 3.b. above to the following addresses:

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

with a copy to:

DBP Compliance Coordinator
Water Supply Division, PDWS, MC 155
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3287

- 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. 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 the City if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
- 8. 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.

9. 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.
10. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
11. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

City of Brady
DOCKET NO. 2009-0546-MLM-E
Page 7

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Sordlien
For the Executive Director

8/21/2009
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of City of Brady. I am authorized to agree to the attached Agreed Order on behalf of City of Brady, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, City of Brady waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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.

James Stewart
Signature

7/16/09
Date

JAMES STEWART
Name (Printed or typed)
Authorized Representative of
City of Brady

MAYOR
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: 2009-0546-MLM-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Brady
Payable Penalty Amount: Three Thousand Seven Hundred Seventy-Five Dollars (\$3,775)
SEP Amount: Three Thousand Seven Hundred Seventy-Five Dollars (\$3,775)
Type of SEP: Pre-approved
Third-Party Recipient: Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")-Abandoned Tire Clean-Up
Location of SEP: McCulloch County

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

1. Project Description

A. Project

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to clean-up sites where tires have been disposed of illegally. Eligible sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping. SEP monies will be used to pay for the direct cost of collecting and disposing of tires. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

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 providing for the proper disposal of tires and by reducing health threats associated with illegally dumped tires. Illegal tire dumpsites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of surface water, ground water, and soil.

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:

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

3. Records and Reporting

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

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

4. Failure to Fully Perform

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

The check for any amount due shall be made out to "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.

