

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0305-MWD-E **TCEQ ID:** RN102178191 **CASE NO.:** 37241

RESPONDENT NAME: Harris County Municipal Utility District No. 109

| | | |
|---|---|--|
| 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 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: Atascosita Central, located at 5003 Atascosita Road, Humble, approximately 0.6 mile south of Farm-to-Market Road 1960 and approximately 2.1 miles west of the intersection of Atascosita Road and Farm-to-Market Road 1960, Harris County</p> <p>TYPE OF OPERATION: Wastewater treatment facility</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 27, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: SEP Coordinator: Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732 TCEQ Enforcement Coordinator: Mr. Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Glenn R. Bogs, President, Harris County Municipal Utility District No. 109, 1301 McKinney Street, Suite 5100, Houston, Texas 77010 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 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 22, 2008</p> <p>Date of NOE Relating to this Case: February 26, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>Failure to maintain the permitted effluent limits for total chlorine residual after de-chlorination [Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011533001, Final Effluent Limitations and Monitoring Requirements No. 2, TEX. WATER CODE § 26.121(a), and 30 TEX. ADMIN. CODE § 305.125(1)].</p> | <p>Total Assessed: \$10,000</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$10,000</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>Findings Orders Justification: This is a Findings Order because environmental receptors have been exposed to pollutants which exceeded levels that are protective which resulted in a documented fish kill.</p> | <p>Corrective Actions Taken:</p> <p>1) The Executive Director recognizes that the Respondent replaced the bleach feed system's circuit control board at the Facility on October 24, 2008 and took immediate action to clean up and properly dispose of the dead fish and return the controller to auto mode on October 23, 2008.</p> <p>Ordering Provisions:</p> <p>2) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> |

Additional ID No(s): WQ0011533001

Attachment A
Docket Number: 2009-0305-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Harris County Municipal Utility District No. 109
Penalty Amount: Ten Thousand Dollars (\$10,000)
SEP Offset Amount: Ten Thousand Dollars (\$10,000)
Type of SEP: Pre-approved
Third-Party Recipient: Gulf Coast Waste Disposal Authority - River, Lakes, Bays 'N Bayous Trash Bash
Location of SEP: Harris 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 Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. Trash Bash is an annual event that entails the use of volunteers to clean up trash and pollutants from Galveston Bay and waterways in the San Jacinto watershed. The project has resulted in the removal of an average of 141.7 tons of trash and 729 abandoned tires annually from these waterways. SEP monies will be used to pay for materials, supplies, disposal cost and transportation cost directly associated with the clean up of trash and pollutants from the Galveston Bay and waterways in the San Jacinto watershed.

The Respondent certifies that it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

The Project will provide a discernible environmental benefit by removing pollutants from the Galveston Bay and waterways in the San Jacinto watershed, which will improve water quality. The project will also help educate volunteers about non-point source pollution and what the volunteers can do to help keep the environment clean.

C. Minimum Expenditure

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

2. Performance Schedule

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

Gulf Coast Waste Disposal Authority
Rivers, Lakes, Bays, and Bayous Trash Bash
Attention: Lori Gernhardt
910 Bay Area Boulevard
Houston, TX 77052

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Recipient. 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 expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

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

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 a 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

| | | | | | | |
|--------------|----------|------------|-----------|------------|---------|--|
| DATES | Assigned | 3-Mar-2009 | Screening | 4-Mar-2009 | EPA Due | |
| | PCW | 5-Mar-2009 | | | | |

| | | | |
|--|--|--------------------|-------|
| RESPONDENT/FACILITY INFORMATION | | | |
| Respondent | Harris County Municipal Utility District No. 109 | | |
| Reg. Ent. Ref. No. | RN102178191 | | |
| Facility/Site Region | 12-Houston | Major/Minor Source | Major |

| | | | |
|---------------------------------|-----------------|-----------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 37241 | No. of Violations | 1 |
| Docket No. | 2009-0305-MWD-E | Order Type | Findings |
| Media Program(s) | Water Quality | Government/Non-Profit | Yes |
| Multi-Media | | Enf. Coordinator | Jorge Ibarra, P.E. |
| | | EC's Team | Enforcement Team 3 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$10,000 |

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

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

Notes

Culpability Enhancement **Subtotal 4**

Notes

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

Economic Benefit Enhancement* **Subtotal 6**

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

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

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 4-Mar-2009

Docket No. 2009-0305-MWD-E

PCW

Respondent Harris County Municipal Utility District No. 109

Policy Revision 2 (September 2002)

Case ID No. 37241

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102178191

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

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) | 3 | 15% |
| | Other written NOVs | 6 | 12% |
| 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) 27%

>> 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 was issued six NOVs without the same/similar type of violations and self-reported three months of effluent violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 27%

| | | | | |
|--|--|--|----------|-------|
| Screening Date 4-Mar-2009 | Docket No. 2009-0305-MWD-E | PCW | | |
| Respondent Harris County Municipal Utility District No. 109 | <small>Policy Revision 2 (September 2002)</small> | | | |
| Case ID No. 37241 | <small>PCW Revision October 30, 2008</small> | | | |
| Reg. Ent. Reference No. RN102178191 | | | | |
| Media [Statute] Water Quality | | | | |
| Enf. Coordinator Jorge Ibarra, P.E. | | | | |
| Violation Number | 1 | | | |
| Rule Cite(s) | Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011533001, Final Effluent Limitations and Monitoring Requirements No. 2, Tex. Water Code § 26.121(a), and 30 Tex. Admin. Code § 305.125(1) | | | |
| Violation Description | Failed to maintain the permitted effluent limits for total chlorine residual at less than 0.1 milligrams per liter ("mg/L") after de-chlorination. Specifically, during the October 22, 2008 investigation, approximately 500 dead fish were seen floating in and along the banks of Williams Gully to a point 1.5 miles downstream of the Facility's outfall due to a malfunction of the bleach feed system. The controller had switched from "auto" mode to "manual" mode causing excessive bleach feed. Total chlorine residual measured in the stream was 1.26 mg/L. | | | |
| Base Penalty | | \$10,000 | | |
| >> Environmental, Property and Human Health Matrix | | | | |
| OR | Harm | | | |
| | Release | Major | Moderate | Minor |
| | Actual | x | | |
| | Potential | | | |
| | | Percent | 100% | |
| >> Programmatic Matrix | | | | |
| | Falsification | Major | Moderate | Minor |
| | | | | |
| | | Percent | 0% | |
| Matrix Notes | Failure to maintain the permitted effluent limits for total chlorine residual after de-chlorination resulted in the release of pollutants which exceeded levels that are protective of human health and the environment as a result of the violation. | | | |
| Adjustment | | \$0 | | |
| | | \$10,000 | | |
| Violation Events | | | | |
| | Number of Violation Events | 1 | 1 | |
| | | Number of violation days | | |
| <small>mark only one with an x</small> | daily | x | | |
| | weekly | | | |
| | monthly | | | |
| | quarterly | | | |
| | semiannual | | | |
| | annual | | | |
| | single event | | | |
| | | Violation Base Penalty | \$10,000 | |
| One daily event is recommended. The penalty was calculated from the date of the discharge, October 22, 2008, to the date immediate action was taken, October 23, 2008. | | | | |
| Good Faith Efforts to Comply | | 25.0% Reduction | \$2,500 | |
| | Before NOV | NOV to EDPRP/Settlement Offer | | |
| Extraordinary | | | | |
| Ordinary | x | | | |
| N/A | | (mark with x) | | |
| Notes | The Respondent achieved compliance on October 24, 2008. | | | |
| | | Violation Subtotal | \$7,500 | |
| Economic Benefit (EB) for this violation | | Statutory Limit Test | | |
| Estimated EB Amount | \$51 | Violation Final Penalty Total | \$10,200 | |
| | | This violation Final Assessed Penalty (adjusted for limits) | \$10,000 | |

Economic Benefit Worksheet

Respondent Harris County Municipal Utility District No. 109
Case ID No. 37241
Reg. Ent. Reference No. RN102178191
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 | \$1,000 | 22-Oct-2008 | 24-Oct-2008 | 0.01 | \$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 | \$1,000 | 22-Oct-2008 | 23-Oct-2009 | 1.00 | \$50 | n/a | \$50 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs
 Estimated cost to replace the bleach feed system's circuit control board at the Facility, October 24, 2008, and to take immediate actions to clean up and properly dispose of the dead fish, October 23, 2008. Date Required is the date of the discharge. Final Date is the compliance date.

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 | \$51 |
|-----------------------------------|---------|--------------|------|

Compliance History Report

| | | | |
|---|--|-------------------------|-------------------|
| Customer/Respondent/Owner-Operator: | CN600736771 Harris County Municipal Utility District No. 109 | Classification: AVERAGE | Rating: 1.68 |
| Regulated Entity: | RN102178191 ATASCOCITA CENTRAL | Classification: AVERAGE | Site Rating: 0.36 |
| ID Number(s): | WASTEWATER | PERMIT | WQ0011533001 |
| | WASTEWATER | PERMIT | TPDES0058963 |
| | WASTEWATER | PERMIT | TX0058963 |
| | WASTEWATER | EPA ID | TX0058963 |
| | WASTEWATER LICENSING | LICENSE | WQ0011533001 |
| Location: | Located at 5003 Atascocita Road, Humble, approximately 0.6 mile south of Farm-to-Market Road 1960 and approximately 2.1 miles west of the intersection of Atascocita Road and Farm-to-Market Road 1960 in Harris County, Texas | | |
| TCEQ Region: | REGION 12 - HOUSTON | | |
| Date Compliance History Prepared: | March 03, 2009 | | |
| Agency Decision Requiring Compliance History: | Enforcement | | |
| Compliance Period: | March 03, 2004 to March 03, 2009 | | |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History | | | |
| Name: | Jorge Ibarra, P.E. | Phone: | (817) 588-5890 |

Site Compliance History Components

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

Components (Multimedia) for the Site :

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

| | | |
|----|------------|----------|
| 1 | 03/19/2004 | (309215) |
| 2 | 03/26/2004 | (309222) |
| 3 | 04/20/2004 | (309216) |
| 4 | 05/20/2004 | (309218) |
| 5 | 06/21/2004 | (309220) |
| 6 | 08/27/2004 | (357709) |
| 7 | 09/20/2004 | (357710) |
| 8 | 10/22/2004 | (357711) |
| 9 | 11/22/2004 | (384930) |
| 10 | 12/20/2004 | (357712) |
| 11 | 01/20/2005 | (384931) |
| 12 | 02/21/2005 | (384927) |
| 13 | 03/21/2005 | (384928) |
| 14 | 03/21/2005 | (384929) |
| 15 | 04/20/2005 | (443810) |

| | | |
|----|------------|----------|
| 16 | 05/13/2005 | (376682) |
| 17 | 06/21/2005 | (443811) |
| 18 | 06/21/2005 | (443812) |
| 19 | 08/22/2005 | (443813) |
| 20 | 09/21/2005 | (443814) |
| 21 | 10/20/2005 | (443815) |
| 22 | 11/17/2005 | (473945) |
| 23 | 12/20/2005 | (473946) |
| 24 | 01/20/2006 | (473947) |
| 25 | 02/21/2006 | (473943) |
| 26 | 03/20/2006 | (473944) |
| 27 | 04/20/2006 | (501915) |
| 28 | 05/24/2006 | (501916) |
| 29 | 06/20/2006 | (501917) |
| 30 | 07/28/2006 | (524195) |
| 31 | 08/21/2006 | (524196) |
| 32 | 09/18/2006 | (531021) |
| 33 | 09/29/2006 | (524197) |
| 34 | 11/27/2006 | (582761) |
| 35 | 12/19/2006 | (593289) |
| 36 | 12/22/2006 | (582762) |
| 37 | 01/08/2007 | (582760) |
| 38 | 01/22/2007 | (582763) |
| 39 | 02/27/2007 | (582753) |
| 40 | 03/23/2007 | (593288) |
| 41 | 03/26/2007 | (582754) |
| 42 | 04/20/2007 | (582755) |
| 43 | 06/18/2007 | (582757) |
| 44 | 07/12/2007 | (582758) |
| 45 | 07/13/2007 | (582756) |
| 46 | 08/02/2007 | (582759) |
| 47 | 09/19/2007 | (603695) |
| 48 | 10/02/2007 | (607397) |
| 49 | 10/10/2007 | (603696) |
| 50 | 10/10/2007 | (603697) |
| 51 | 11/15/2007 | (622377) |
| 52 | 11/26/2007 | (596312) |
| 53 | 12/18/2007 | (622378) |
| 54 | 02/21/2008 | (674061) |
| 55 | 03/20/2008 | (674062) |
| 56 | 04/19/2008 | (674063) |
| 57 | 05/16/2008 | (692362) |
| 58 | 06/03/2008 | (681889) |
| 59 | 06/16/2008 | (692363) |
| 60 | 07/17/2008 | (692364) |
| 61 | 08/13/2008 | (713468) |
| 62 | 09/24/2008 | (713469) |
| 63 | 10/02/2008 | (713471) |
| 64 | 10/22/2008 | (713470) |
| 65 | 11/20/2008 | (729513) |
| 66 | 12/11/2008 | (729514) |
| 67 | 02/26/2009 | (707632) |

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

| | | | |
|--------------|---|----------|----------------------|
| Date: | 05/12/05 | (376682) | CN600736771 |
| Self Report? | NO | | Classification Minor |
| Citation: | 30 TAC Chapter 305, SubChapter F 305.125(1) | | |

Description: Failure to ensure flow measurement accuracy.
 Self Report? NO Classification Minor
 Citation: 30 TAC Chapter 319, SubChapter A 319.7(c)
 Description: Failure to properly report the two-hour peak flow on the monthly Discharge Monitoring Reports (DMRs).
 Date: 09/30/2005 (443815) CN600736771
 Self Report? YES Classification Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 03/31/2006 (501915) CN600736771
 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: 09/18/2006 (531021) CN600736771
 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: 12/19/2006 (593289) CN600736771
 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: 03/23/2007 (593288) CN600736771
 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: 05/31/2007 (582757) CN600736771
 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: 10/02/2007 (607397) CN600736771
 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: 11/26/2007 (596312) CN600736771
 Self Report? NO Classification Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to provide documentation for the secondary flow measuring device certification.

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 | § | BEFORE THE |
| ENFORCEMENT ACTION | § | |
| CONCERNING | § | |
| HARRIS COUNTY MUNICIPAL UTILITY | § | TEXAS COMMISSION ON |
| DISTRICT NO. 109 | § | |
| RN102178191 | § | ENVIRONMENTAL QUALITY |

**AGREED ORDER
DOCKET NO. 2009-0305-MWD-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 Harris County Municipal Utility District No. 109 ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent 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 Respondent 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 Respondent.

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

I. FINDINGS OF FACT

1. The Respondent owns and operates a wastewater treatment facility Located at 5003 Atascocita Road, Humble, approximately 0.6 mile south of Farm-to-Market Road 1960 and approximately

2.1 miles west of the intersection of Atascosita Road and Farm-to-Market Road 1960 in Harris County, Texas (the "Facility").

2. The Respondent has discharged sewage into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation on October 22, 2008, TCEQ staff documented that the Respondent did not maintain the permitted effluent limits for total chlorine residual at less than 0.1 milligrams per liter after de-chlorination. Specifically, approximately 500 dead fish were seen floating in and along the banks of Williams Gully to a point 1.5 miles downstream of the Facility's outfall due to a malfunction of the bleach feed system. The controller had switched from "auto" mode to "manual" mode causing excessive bleach feed. Total chlorine residual measured in the stream was 1.26 milligrams per liter.
4. The Respondent received notice of the violations on March 3, 2009.
5. The Executive Director recognizes that the Respondent replaced the bleach feed system's circuit control board at the Facility and cleaned up the dead fish on October 24, 2008.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to maintain the permitted effluent limits for total chlorine residual after de-chlorination, in violation of Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011533001, Final Effluent Limitations and Monitoring Requirements No. 2, TEX. WATER CODE § 26.121(a), and 30 TEX. ADMIN. CODE § 305.125(1).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent 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.
4. An administrative penalty in the amount of Ten Thousand Dollars (\$10,000) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Ten Thousand Dollar (\$10,000) shall be conditionally offset by The Respondent's completion of a Supplemental Environmental Project ("SEP").

III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Ten Thousand Dollars (\$10,000) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent'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: Harris County Municipal Utility District No. 109, Docket No. 2009-0305-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 Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I or II, Paragraph 4 above, Ten Thousand Dollars (\$10,000) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent'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 provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. 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 Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. 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.
10. 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Sadler
For the Executive Director

8/6/2009
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Harris County Municipal Utility District No. 109. I am authorized to agree to the attached Agreed Order on behalf of Harris County Municipal Utility District No. 109, 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, Harris County Municipal Utility District No. 109 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.

Glenn R. Bogs
Signature

May 26, 2009
Date

GLENN R. BOGS
Name (Printed or typed)

President
Title

Authorized Representative of
Harris County Municipal Utility District No. 109

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.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

| | |
|-------------------------------|--|
| Respondent: | Harris County Municipal Utility District No. 109 |
| Penalty Amount: | Ten Thousand Dollars (\$10,000) |
| SEP Offset Amount: | Ten Thousand Dollars (\$10,000) |
| Type of SEP: | Pre-approved |
| Third-Party Recipient: | Gulf Coast Waste Disposal Authority - River, Lakes, Bays 'N Bayous Trash Bash |
| Location of SEP: | Harris 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 Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. Trash Bash is an annual event that entails the use of volunteers to clean up trash and pollutants from Galveston Bay and waterways in the San Jacinto watershed. The project has resulted in the removal of an average of 141.7 tons of trash and 729 abandoned tires annually from these waterways. SEP monies will be used to pay for materials, supplies, disposal cost and transportation cost directly associated with the clean up of trash and pollutants from the Galveston Bay and waterways in the San Jacinto watershed.

The Respondent certifies that it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

The Project will provide a discernible environmental benefit by removing pollutants from the Galveston Bay and waterways in the San Jacinto watershed, which will improve water quality. The project will also help educate volunteers about non-point source pollution and what the volunteers can do to help keep the environment clean.

C. Minimum Expenditure

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

2. Performance Schedule

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

Gulf Coast Waste Disposal Authority
Rivers, Lakes, Bays, and Bayous Trash Bash
Attention: Lori Gernhardt
910 Bay Area Boulevard
Houston, TX 77052

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Recipient. 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 expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

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

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 a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

