

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1025-MWD-E **TCEQ ID:** RN102844610 **CASE NO.:** 37891

RESPONDENT NAME: City of Elkhart

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Elkhart WWTP, located approximately 0.3 mile east-southeast of the intersection of State Highway 294 and Farm-to-Market Road 319 and approximately 0.6 mile southwest of the intersection of State Highway 294 and Farm-to-Market Road 861, Anderson County</p> <p>TYPE OF OPERATION: Wastewater treatment facility with an associated collection system</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 December 14, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Lanae Foard, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2554; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: The Honorable Raymond Dunlap, Mayor, City of Elkhart, P.O. Box 944, Elkhart, Texas 75839 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: April 8, 2009</p> <p>Date of NOV/NOE Relating to this Case: June 16, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>Failure to prevent the unauthorized discharge of wastewater into or adjacent to water in the state. Specifically, the Respondent reported an unauthorized discharge on March 24, 2009, of 150,000 gallons from the Jones Road Lift Station due to inflow from heavy rain [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System Permit No. WQ0010735001, Permit Conditions No. 2.g].</p>	<p>Total Assessed: \$2,790</p> <p>Total Deferred: \$558 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,232</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that on or about March 25, 2009, the Respondent cleaned and disinfected the area where the discharge occurred.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 90 days after the effective date of this Agreed Order, conduct an engineering evaluation of the Facility to assess the extent of inflow and infiltration ("I/I") of storm water into the collection system and the impacts of I/I on hydraulic loading and performance at the Facility. The evaluation shall be prepared by a licensed Texas professional engineer;</p> <p>b. Within 105 days, submit written certification of compliance with Ordering Provision a;</p> <p>c. Within 180 days after the effective date of this Agreed Order, complete a plan and schedule for the completion of necessary corrective actions to fully rehabilitate the Facility based on the engineering evaluation. This schedule should allow for completion of all repairs within 365 days after the effective date of this Agreed Order. The Respondent shall provide a copy of the plan and schedule;</p> <p>d. Within 195 days, submit written certification of compliance with Ordering Provision c;</p> <p>e. Within 365 days after the effective date of this Agreed Order, complete all necessary corrective actions to fully rehabilitate the Facility based on the engineering plan and schedule referenced in Ordering Provision c;</p> <p>f. Within 380 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision e; and</p> <p>g. The certification shall include detailed supporting documentation including</p>

		photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a, c, and e.
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Additional ID No(s): WQ0010735-001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ DATES	Assigned	22-Jun-2009	Screening	26-Jun-2009	EPA Due	
	PCW	6-Aug-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Elkhart
Reg. Ent. Ref. No.	RN102844610
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37891	No. of Violations	1
Docket No.	2009-1025-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Lanae Foard
		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	\$1,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the Indicated percentage.			
Compliance History	179.0% Enhancement	Subtotals 2, 3, & 7	\$1,790

Notes: An enhancement is recommended due to two final agreed orders with denial of liability, two NOVs for violations same or similar to those cited in this action, two non-similar NOVs, and 25 self-reported monthly effluent violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
Total EB Amounts	\$6,271	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$50,500		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,790
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$2,790**

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,790
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DEFERRAL	20.0% Reduction	Adjustment	-\$558
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$2,232
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Screening Date 26-Jun-2009

Docket No. 2009-1025-MWD-E

PCW

Respondent City of Elkhart

Policy Revision 2 (September 2002)

Case ID No. 37891

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102844610

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

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)	27	135%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	2	40%
	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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 179%

>> **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

An enhancement is recommended due to two final agreed orders with denial of liability, two NOVs for violations same or similar to those cited in this action, two non-similar NOVs, and 25 self-reported monthly effluent violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 179%

Screening Date	26-Jun-2009	Docket No.	2009-1025-MWD-E	PCW
Respondent	City of Elkhart	Policy Revision 2 (September 2002)		
Case ID No.	37891	PCW Revision October 30, 2008		
Reg. Ent. Reference No.	RN102844610			
Media [Statute]	Water Quality			
Enf. Coordinator	Lanae Foard			

Violation Number

Rule Cite(s) Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0010735001, Permit Conditions No. 2.g

Violation Description
Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, as documented during an investigation conducted on April 8, 2009. Specifically, the Respondent reported an unauthorized discharge on March 24, 2009, of 150,000 gallons from the Jones Road Lift Station due to inflow from heavy rain.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm				Percent <input type="text" value="10%"/>
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

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

Matrix Notes
Human health or the environment has been exposed to insignificant amounts of pollutants as a result of this violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$1,000"/>
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input checked="" type="checkbox"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	

One quarterly event is recommended from the date of the discharge (March 24, 2009) to the date the discharge ceased and actions were taken to clean the area where the discharge occurred (March 25, 2009).

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)
Notes	The Respondent does not meet the good faith criteria for this violation.	

Violation Subtotal

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

Estimated EB Amount Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent: City of Elkhart
Case ID No.: 37891
Reg. Ent. Reference No.: RN102844610
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
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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	\$50,000	24-Mar-2009	7-Jan-2011	1.79	\$299	\$5,973	\$6,271
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	\$500	24-Mar-2009	25-Mar-2009	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 conduct an engineering study to determine the sources of inflow and infiltration ("I/I"), to make necessary repairs to the collection system to reduce I/I, and to clean and disinfect the area where the discharge occurred. Date required is the initial date of noncompliance. Final dates are the expected date of compliance and the date the area where the discharge occurred was cleaned, respectively.

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	\$50,500	TOTAL	\$6,271
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Compliance History Report

Customer/Respondent/Owner-Operator:	CN600737738	City of Elkhart	Classification: AVERAGE	Rating: 6.33
Regulated Entity:	RN102844810	CITY OF ELKHART WWTP	Classification: AVERAGE	Site Rating: 12.99
ID Number(s):	WASTEWATER	PERMIT	WQ0010735001	
	WASTEWATER	PERMIT	TPDES0022578	
	WASTEWATER	PERMIT	TX0022578	
	WASTEWATER LICENSING	LICENSE	WQ0010735001	
Location:	approximately 0.3 mile east-southeast of the intersection of State Highway 294 and Farm-to-Market Road 319 and approximately 0.6 mile southwest to the intersection of State Highway 294 and Farm-to-Market Road 861 in Anderson County, Texas			
TCEQ Region:	REGION 05 - TYLER			
Date Compliance History Prepared:	August 17, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 17, 2004 to August 17, 2009			

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

Name: Lanae Foard Phone: 512-239-2554

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
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.
- | | |
|---|----------------------------|
| Effective Date: 05/23/2005 | ADMINORDER 2004-0873-MWD-E |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)(B)
30 TAC Chapter 305, SubChapter F 305.125(1)(C) | |
| Description: Failure to complete and submit an annual sludge report. | |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 305, SubChapter F 305.125(1) | |
| Rqmt Prov: 10735-001 PERMIT | |
| Description: Failure to maintain sludge disposal records. | |
| Classification: Minor | |
| Citation: 30 TAC Chapter 305, SubChapter F 305.125(5) | |
| Rqmt Prov: 10735-001 PERMIT | |
| Description: Failure to properly operate and maintain manual bar screens. | |
| Classification: Moderate | |
| Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
30 TAC Chapter 305, SubChapter F 305.125(5) | |
| Rqmt Prov: 10735-001 PERMIT | |
| Description: Failure to properly operate the aeration basin. | |
| Classification: Moderate | |
| Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
30 TAC Chapter 305, SubChapter F 305.125(1) | |
| Rqmt Prov: 10735-001 PERMIT | |
| Description: Failure to comply with the permitted effluent single grab BOD5 limitation of 35 mg/L and failed to comply with the permitted effluent limitation of 80 mg/L for TSS. | |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 305, SubChapter F 305.125(1) | |
| Rqmt Prov: 10735-001 PERMIT | |
| Description: Failure to maintain a chlorine residual between 1.0 mg/L-4.0 mg/L. | |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 319, SubChapter A 319.7(a) | |
| Rqmt Prov: 3.b PERMIT | |

Description: Failure to analyze chlorine at the permitted measurement frequency.

Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)

Rqmt Prov: 10735-001 PERMIT

Description: Failure to maintain required sampling records.

Classification: Moderate

Citation: 30 TAC Chapter 319, SubChapter A 319.6

30 TAC Chapter 319, SubChapter A 319.9(c)

Rqmt Prov: 10735-001 PERMIT

Description: Failure to maintain quality assurance quality control records for chlorine analysis.

Classification: Moderate

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

Rqmt Prov: 10735-001 PERMIT

Description: Failure to maintain required process control records.

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)

30 TAC Chapter 317 317.3

Description: Failure to properly secure lift stations.

Classification: Moderate

Citation: 30 TAC Chapter 317 317.3(b)(1)

Rqmt Prov: 10735-001 PERMIT

Description: Failure to provide standby pumps to lift stations which handle wastes from two or more residential housing units or from any public establishments.

Classification: Moderate

Citation: 30 TAC Chapter 319, SubChapter A 319.7(d)

Rqmt Prov: 10735-001 PERMIT

Description: Failure to submit DMRs for the months of November 2002 through August 2003.

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

30 TAC Chapter 305, SubChapter F 305.125(5)

Rqmt Prov: Operational Requirements, Provision 1 PERMIT

Description: Failed to prevent an unauthorized discharge of wastewater or any other waste. Specifically, sludge was bulking over the clarifier weirs passing through the chlorine contact chamber and being discharged into the receiving stream.

Effective Date: 02/22/2009

ADMINORDER 2008-1639-MWD-E

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: Effluent Limits PERMIT

Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.

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	08/30/2004	(353345)
2	09/20/2004	(353346)
3	10/15/2004	(353347)
4	11/12/2004	(382531)
5	11/12/2004	(382533)
6	11/12/2004	(382534)
7	11/12/2004	(382535)
8	11/12/2004	(382536)
9	11/12/2004	(382537)
10	11/12/2004	(382538)
11	11/12/2004	(382539)
12	11/12/2004	(382540)
13	11/12/2004	(382541)
14	11/12/2004	(382543)
15	11/12/2004	(382545)

16	11/17/2004	(337183)
17	11/22/2004	(382542)
18	12/20/2004	(382544)
19	01/21/2005	(382546)
20	02/24/2005	(420379)
21	03/18/2005	(382532)
22	04/15/2005	(420380)
23	05/23/2005	(420381)
24	06/29/2005	(420382)
25	07/14/2005	(399989)
26	07/18/2005	(441434)
27	08/22/2005	(441435)
28	09/14/2005	(431953)
29	09/22/2005	(441436)
30	10/24/2005	(469632)
31	11/21/2005	(436975)
32	11/21/2005	(469633)
33	12/27/2005	(469634)
34	01/23/2006	(469635)
35	02/21/2006	(469630)
36	03/27/2006	(469631)
37	04/20/2006	(498975)
38	05/15/2006	(498976)
39	06/19/2006	(498977)
40	07/24/2006	(521016)
41	08/14/2006	(521017)
42	09/20/2006	(521018)
43	10/16/2006	(577039)
44	11/27/2006	(577040)
45	12/15/2006	(577041)
46	01/23/2007	(577042)
47	02/23/2007	(577034)
48	03/23/2007	(577035)
49	04/19/2007	(577036)
50	05/25/2007	(577037)
51	06/14/2007	(577038)
52	08/06/2007	(602087)
53	08/24/2007	(566653)
54	08/28/2007	(602088)
55	09/21/2007	(602089)
56	10/22/2007	(620105)
57	11/21/2007	(620106)
58	12/20/2007	(620107)
59	01/21/2008	(672521)
60	02/29/2008	(690473)
61	03/21/2008	(672520)
62	04/21/2008	(690474)
63	05/22/2008	(690475)
64	08/20/2008	(711318)
65	07/21/2008	(711319)
66	08/15/2008	(711320)
67	08/31/2008	(727896)
68	10/02/2008	(701932)
69	10/08/2008	(727897)
70	10/20/2008	(727898)
71	11/12/2008	(707640)
72	11/24/2008	(727899)
73	12/15/2008	(727900)
74	01/26/2009	(750799)
75	02/20/2009	(750798)
76	06/16/2009	(742386)

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

Date: 10/29/2004 (337183) CN600737738

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 319, SubChapter C 319.302(b)(3)

Description: Failure to notify local media of a wastewater bypass of 100,000 gallons or greater.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to notify the TCEQ within 24 hours of becoming aware of a wastewater bypass.

Date:	11/30/2004	(382544)	CN600737738	
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	02/28/2005	(382532)	CN600737738	
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	11/24/2005	(436975)	CN600737738	
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5) 30 TAC Chapter 317 317.4(g)			
Description:	Failure to properly operate and maintain the aerated lagoon.			
Date:	11/30/2005	(469634)	CN600737738	
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	(498975)	CN600737738	
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:	04/30/2006	(498976)	CN600737738	
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	08/30/2006	(521016)	CN600737738	
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	11/30/2006	(577041)	CN600737738	
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:	03/31/2007	(577036)	CN600737738	
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:	04/30/2007	(577037)	CN600737738	
Self Report?	YES		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	05/31/2007	(577038)	CN600737738	
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:	06/30/2007	(602067)	CN600737738	
Self Report?	YES		Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	07/31/2007	(602068)	CN600737738	
Self Report?	YES		Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	08/30/2007	(666653)	CN600737738	
Self Report?	NO		Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) OPERATIONAL REQUIREMENTS PERMIT			
Description:	Failure to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained.			
Self Report?	NO		Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5) 30 TAC Chapter 317 317.4(b)(6) PERMIT CONDITIONS PERMIT			
Description:	Failure to accurately describe and/or include all treatment units used in the treatment process, in the permit renewal application received by the TCEQ on June 9, 2006.			

Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)(B) 30 TAC Chapter 305, SubChapter F 305.125(1)(C) SLUDGE PROVISIONS PERMIT		
Description:	Failure to accurately complete the Annual Sludge Discharge Monitoring Report submitted to the TCEQ for the period ending July 31, 2005.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(9) MONITORING AND REPORTING REQUIREMENTS PERMIT		
Description:	Failure to provide, to the Tyler Region Office, oral notification within 24 hours of becoming aware of a noncompliance and failed to submit written submission containing a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and steps taken to its adverse effects.		
Date:	08/31/2007 (620269)	CN600737738	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	09/30/2007 (620105)	CN600737738	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	10/31/2007 (620106)	CN600737738	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	11/30/2007 (620107)	CN600737738	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	12/31/2007 (672521)	CN600737738	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	03/31/2008 (690474)	CN600737738	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	04/30/2008 (690475)	CN600737738	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	06/30/2008 (711319)	CN600737738	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	07/03/2008 (684634)		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 291, SubChapter F 291.94(a)		
Description:	Failure to properly maintain the collection system as specified in 30 TAC§291.94(a).		
Date:	07/31/2008 (711320)	CN600737738	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	08/31/2008 (727897)	CN600737738	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	09/30/2008 (727898)	CN600737738	
Self Report?	YES	Classification:	Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter
Date: 10/31/2008 (727899) CN600737738
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter
Date: 11/30/2008 (727900) CN600737738
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF ELKHART
RN102844610

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§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-1025-MWD-E

I. JURISDICTION AND STIPULATIONS

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

1. The City owns and operates a wastewater treatment facility with an associated collection system located approximately 0.3 mile east-southeast of the intersection of State Highway 294 and Farm-to-Market Road 319 and approximately 0.6 mile southwest of the intersection of State Highway 294 and Farm-to-Market Road 861 in Anderson County, Texas (the "Facility").
2. The City has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about June 21, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Two Thousand Seven Hundred Ninety Dollars (\$2,790) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The City has paid Two Thousand Two Hundred Thirty-Two Dollars (\$2,232) of the administrative penalty and Five Hundred Fifty-Eight Dollars (\$558) is deferred contingent upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that on or about March 25, 2009, the City cleaned and disinfected the area where the discharge occurred.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the City is alleged to have failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0010735001, Permit Conditions No. 2.g, as documented during an investigation conducted on April 8, 2009. Specifically, the City reported an unauthorized discharge on March 24, 2009, of 150,000 gallons from the Jones Road Lift Station due to inflow from heavy rain.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Elkhart, Docket No. 2009-1025-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. It is further ordered that the City shall undertake the following technical requirements:
 - a. Within 90 days after the effective date of this Agreed Order, conduct an engineering evaluation of the Facility to assess the extent of inflow and infiltration ("I/I") of storm water into the collection system and the impacts of I/I on hydraulic loading and performance at the Facility. The evaluation shall be prepared by a licensed Texas professional engineer;
 - b. Within 105 days, submit written certification of compliance with Ordering Provision No. 2.a, in accordance with Ordering Provision No. 2.g below;
 - c. Within 180 days after the effective date of this Agreed Order, complete a plan and schedule for the completion of necessary corrective actions to fully rehabilitate the Facility based on the engineering evaluation. This schedule should allow for completion of all repairs within 365 days after the effective date of this Agreed Order. The City shall provide a copy of the plan and schedule to the addresses listed in Ordering Provision No. 2.g below;
 - d. Within 195 days, submit written certification of compliance with Ordering Provision No. 2.c, in accordance with Ordering Provision No. 2.g below;
 - e. Within 365 days after the effective date of this Agreed Order, complete all necessary corrective actions to fully rehabilitate the Facility based on the engineering plan and schedule referenced in Ordering Provision No. 2.c;
 - f. Within 380 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2. e, in accordance with Ordering Provision No. 2.g below; and
 - g. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions Nos. 2.a, 2.c, and 2.e. 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
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3734

3. 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.
4. 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.
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 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.
6. 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.

7. 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.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Szalun

For the Executive Director

11/13/2009

Date

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

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

Raymond Dunlap

Signature

OCTOBER 05, 2009

Date

RAYMOND DUNLAP

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

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.