

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1257-MWD-E **TCEQ ID:** RN101920262 **CASE NO.:** 38102

RESPONDENT NAME: City of Midway

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 Midway, located 3,000 feet southeast of the intersection of State Highway 21 and Farm-to-Market Road 2548 and 2,200 feet east of the intersection of Gin Creek and Farm-to-Market Road 247 and east of Midway, Madison 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 December 21, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Samuel Short, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5363; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: The Honorable J.W. Williams, Mayor, City of Midway, P.O. Box 227, Midway, Texas 75852 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: July 15, 2009</p> <p>Date of NOV/NOE Relating to this Case: July 22, 2009 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastewater in the event of an electrical power failure by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater [30 TBX. ADMIN. CODE § 305.125(1) and (5) and Texas Pollutant Discharge Elimination System Permit No. WQ0013378001, Operational Requirements No. 4].</p>	<p>Total Assessed: \$5,175</p> <p>Total Deferred: \$1,035 <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: \$4,140</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 the Respondent has submitted an application for funding in February 2009 for emergency generators and associated appurtenances.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to within 90 days after the effective date of this Agreed Order, submit written certification that adequate safeguards were installed to prevent the discharge of untreated or inadequately treated wastes during electrical power failures including detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.</p>

Additional ID No(s): WQ0013378001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	27-Jul-2009	Screening	6-Aug-2009	EPA Due	
	PCW	10-Aug-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Midway
Reg. Ent. Ref. No.	RN101920262
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38102	No. of Violations	1
Docket No.	2009-1257-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Samuel Short
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement Subtotals 2, 3, & 7

Notes: Enhancement recommended for having one NOV for the same or similar violation, 41 NOVs for non-similar violations, and one Agreed Order with denial within the last five years.

Culpability Enhancement Subtotal 4

Notes: The City does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5

Economic Benefit Enhancement* Subtotal 6

Total EB Amounts	\$7,456
Approx. Cost of Compliance	\$130,000

*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:

Deferral offered for expedited settlement.

PAYABLE PENALTY Final Assessed Penalty

Screening Date 6-Aug-2009

Docket No. 2009-1257-MWD-E

PCW

Respondent City of Midway

Policy Revision 2 (September 2002)

Case ID No. 38102

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101920262

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

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)	1	5%
	Other written NOVs	41	82%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	1	20%
	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) 107%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement recommended for having one NOV for the same or similar violation, 41 NOVs for non-similar violations, and one Agreed Order with denial within the last five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 107%

Screening Date 6-Aug-2009	Docket No. 2009-1257-MWD-E	PCW			
Respondent City of Midway	<small>Policy Revision 2 (September 2002)</small>				
Case ID No. 38102	<small>PCW Revision October 30, 2008</small>				
Reg. Ent. Reference No. RN101920262					
Media [Statute] Water Quality					
Enf. Coordinator Samuel Short					
Violation Number 1					
Rule Cite(s)	30 Tex. Admin. Code § 305.125(1) and (5) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013378001, Operational Requirements No. 4				
Violation Description	Failed to provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastewater in the event of an electrical power failure by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.				
Base Penalty		\$10,000			
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Potential	x	<input type="text"/>	<input type="text"/>		
		Percent	25%		
>> Programmatic Matrix					
		Falsification	Major	Moderate	Minor
		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
				Percent	0%
Matrix Notes	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors.				
		Adjustment		\$7,500	
				\$2,500	
Violation Events					
		Number of Violation Events	1	Number of violation days	22
<small>mark only one with an x</small>	daily	<input type="text"/>			
	weekly	<input type="text"/>			
	monthly	x			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			
				Violation Base Penalty	\$2,500
One monthly event is recommended from the investigation date, July 15, 2009, to the date of screening, August 6, 2009.					
Good Faith Efforts to Comply		0.0% Reduction		\$0	
		<small>Before NOV</small>	<small>NOV to EDRP/Settlement Offer</small>		
Extraordinary	<input type="text"/>	<input type="text"/>			
Ordinary	<input type="text"/>	<input type="text"/>			
N/A	x	(mark with x)			
Notes	The City does not meet the good faith criteria for this violation.				
		Violation Subtotal		\$2,500	
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount		\$7,455		Violation Final Penalty Total	\$5,175
		This violation Final Assessed Penalty (adjusted for limits)		\$5,175	

Economic Benefit Worksheet

Respondent City of Midway
Case ID No. 38102
Reg. Ent. Reference No. RN101920262
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	Overtime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment	\$130,000	15-Jul-2009	10-May-2010	0.82	\$355	\$7,100	\$7,455
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost for four standby generators. Date required is the investigation date and the final date is the expected date of compliance.

Avoided Costs

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

Disposal				0.00	\$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

\$130,000

TOTAL

\$7,455

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600639215	City of Midway	Classification: AVERAGE	Rating: 2.87
Regulated Entity:	RN101920262	CITY OF MIDWAY	Classification: AVERAGE	Site Rating: 2.87
ID Number(s):	WASTEWATER	PERMIT		WQ0013378001
	WASTEWATER	PERMIT		TPDES0102849
	WASTEWATER	PERMIT		TX0102849
	WASTEWATER LICENSING	LICENSE		WQ0013378001

Location: LOCATED 3,000 FEET SOUTHEAST OF THE INTERSECTION OF STATE HIGHWAY 21 AND FARM-TO-MARKET ROAD 2548 AND 2,200 FEET EAST OF THE INTERSECTION OF GIN CREEK AND FARM-TO-MARKET ROAD 247 AND EAST OF THE CITY OF MIDWAY, IN MADISON COUNTY, TEXAS

TCEQ Region: REGION 09 - WACO
 Date Compliance History Prepared: August 06, 2009
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: August 06, 2004 to August 06, 2009

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

Name: Samuel Short Phone: (512) 239-5363

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: 01/12/2008 ADMINORDER 2007-0318-MWD-E

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: Effluent Limits PERMIT
 Description: Failure to comply with permitted effluent limits

Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Rqmt Prov: Self-reporting Requirements PERMIT
 Description: Failure to submit the Ammonia Nitrogen data on the Discharge Monitoring Report ("DMR") for the monitoring periods ending September 30, 2006 and October 31, 2006
- 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 | 08/09/2004 | (363899) |
|---|------------|----------|

2	08/16/2004	(363893)
3	09/08/2004	(363900)
4	09/14/2004	(363896)
5	09/15/2004	(363901)
6	10/26/2004	(363902)
7	11/03/2004	(388485)
8	11/03/2004	(388487)
9	12/15/2004	(388488)
10	01/13/2005	(388489)
11	02/18/2005	(388484)
12	03/18/2005	(388486)
13	04/14/2005	(430580)
14	05/16/2005	(430581)
15	06/21/2005	(430583)
16	07/18/2005	(430582)
17	08/05/2005	(446458)
18	09/12/2005	(446459)
19	10/03/2005	(479083)
20	11/17/2005	(479084)
21	12/14/2005	(479085)
22	01/12/2006	(479086)
23	02/21/2006	(479081)
24	03/20/2006	(479082)
25	04/17/2006	(504975)
26	07/06/2006	(527270)
27	08/07/2006	(527271)
28	08/21/2006	(527272)
29	09/29/2006	(527273)
30	11/06/2006	(628270)
31	11/20/2006	(628271)
32	12/27/2006	(628272)
33	01/29/2007	(628273)
34	02/22/2007	(538322)
35	03/19/2007	(628269)
36	02/27/2008	(636997)
37	05/01/2008	(694775)
38	05/01/2008	(694777)
39	05/01/2008	(694789)
40	06/06/2008	(694776)
41	06/06/2008	(694778)
42	06/06/2008	(694779)
43	06/06/2008	(694780)
44	06/06/2008	(694781)
45	06/06/2008	(694782)
46	06/06/2008	(694783)
47	06/06/2008	(694784)
48	06/06/2008	(694785)
49	06/06/2008	(694786)
50	06/06/2008	(694787)
51	06/06/2008	(694788)
52	06/20/2008	(716271)
53	08/04/2008	(716272)
54	08/13/2008	(716273)
55	10/14/2008	(716274)
56	11/13/2008	(731770)
57	01/12/2009	(731771)
58	01/12/2009	(731772)
59	01/12/2009	(731773)
60	02/25/2009	(755164)

61 03/31/2009 (740520)
 62 05/18/2009 (705925)
 63 05/19/2009 (744537)
 64 07/24/2009 (762283)

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

Date: 08/31/2004 (363901) CN600639215
 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: 09/30/2004 (363902) CN600639215
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 10/31/2004 (322029) CN600639215
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 11/30/2004 (388488) CN600639215
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 12/31/2004 (388489) CN600639215
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 01/31/2005 (388484) CN600639215
 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 (388486) CN600639215
 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: 03/31/2005 (430580) CN600639215
 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: 04/30/2005 (430581) CN600639215
 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: 05/31/2005 (430583) CN600639215
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 07/31/2005 (446458) CN600639215
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 08/31/2005 (446459) CN600639215

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:	09/30/2005 (479083)	CN600639215	
Self Report?	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	10/31/2005 (479084)	CN600639215	
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:	11/30/2005 (479085)	CN600639215	
Self Report?	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	12/31/2005 (479086)	CN600639215	
Self Report?	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	01/31/2006 (479081)	CN600639215	
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:	02/28/2006 (479082)	CN600639215	
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 (504975)	CN600639215	
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 (430582)	CN600639215	
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:	05/31/2006 (527270)	CN600639215	
Self Report?	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	07/31/2006 (527272)	CN600639215	
Self Report?	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	08/31/2006 (527273)	CN600639215	
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:	09/30/2006 (628270)	CN600639215	
Self Report?	YES	Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		

Description:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Date:	10/31/2006	(628271)	CN600639215
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Date:	11/30/2006	(628272)	CN600639215
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Date:	12/31/2006	(628273)	CN600639215
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Date:	01/31/2007	(628269)	CN600639215
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Date:	02/28/2007	(694776)	CN600639215
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Date:	03/31/2007	(694778)	CN600639215
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Date:	04/30/2007	(694780)	CN600639215
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Date:	09/30/2007	(694786)	CN600639215
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Date:	10/31/2007	(694787)	CN600639215
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Date:	12/31/2007	(694789)	CN600639215
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Date:	01/31/2008	(694775)	CN600639215
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Date:	02/29/2008	(694777)	CN600639215
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
Description:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Date:			
Description:	Failure to meet the limit for one or more permit parameter		

Date: 04/30/2008 (694781) CN600639215
 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 (716272) CN600639215
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 07/31/2008 (716273) CN600639215
 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 (716274) CN600639215
 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: 03/27/2009 (740520) CN600639215
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 305, SubChapter F 305.125(5)
 Operational Requirements; No. 4, pg. 10 PERMIT
 Description: Failure to install and subsequently maintain adequate safeguards to prevent the
 discharge of untreated or inadequately treated wastes during electrical power failures
 by means of alternate power sources, standby generators, and/or retention of
 inadequately treated wastewater.
 Date: 05/22/2009 (744537) CN600639215
 Self Report? NO Classification: Minor
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Effluent Limitations and Monitoring Req. PERMIT
 Description: Failure by the permittee to maintain a pH level between the values of 6.0 - 9.0 s.u. as
 required by permit.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Monitoring and Reporting Requirements PERMIT
 Description: Failure to maintain records of monitoring information related to sewage sludge use and
 disposal activities for a period of at least five years.
 Self Report? NO Classification: Minor
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Effluent Limitation and Monitoring Req. PERMIT
 Description: Failure by the permittee to discharge wastewater effluent in compliance with permitted
 effluent limitations.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF MIDWAY
RN101920262**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-1257-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 the City of Midway ("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 located 3,000 feet southeast of the intersection of State Highway 21 and Farm-to-Market Road 2548 and 2,200 feet east of the intersection of Gin Creek and Farm-to-Market Road 247 and east of Midway, in Madison 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 July 27, 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 Five Thousand One Hundred Seventy-Five Dollars (\$5,175) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The City has paid Four Thousand One Hundred Forty Dollars (\$4,140) of the administrative penalty and One Thousand Thirty-Five Dollars (\$1,035) 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 the City has submitted an application for funding in February 2009 for emergency generators and associated appurtenances.
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 provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastewater in the event of an electrical power failure by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (5) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013378001, Operational Requirements No. 4, as documented during a record review conducted on July 15, 2009.

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 Midway, Docket No. 2009-1257-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, within 90 days after the effective date of this Agreed Order, submit written certification as described below, that adequate safeguards were installed to prevent the discharge of untreated or inadequately treated wastes during electrical power failures, in accordance with TPDES Permit No. WQ0013378001 including detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

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



For the Executive Director

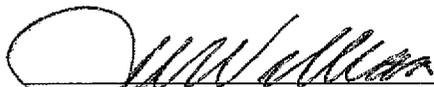
12/1/2009
Date

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.



Signature

10-13-09
Date

J. W. Williams

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

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.

