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**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2009-0628-MWD-E **TCEQ ID:** RN102963238 **CASE NO.:** 37517  
**RESPONDENT NAME:** Benbrook Texas Limited Partnership

|  |   |  |
|--|---|--|
| <b>ORDER TYPE:</b>   |   |  |
| <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                    |  |
| <b>CASE TYPE:</b>  |   |  |
| <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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Benbrook Texas Limited Partnership, 5130 Ben Day Murrin Road, Lot 841, approximately 0.5 mile south of the intersection of U. S. Highway 377 and Farm-to-Market Road 1187, approximately 16 miles southwest of Fort Worth's central business district, Tarrant County</p> <p><b>TYPE OF OPERATION:</b> Wastewater treatment plant</p> <p><b>SMALL BUSINESS:</b>    <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on October 18, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b><br/> <b>TCEQ Attorney/SEP Coordinator:</b> None<br/> <b>TCEQ Enforcement Coordinator:</b> Ms. Evette Alvarado, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2573; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495<br/> <b>Respondent:</b> Ms. Linda Chupik, Regional Manager, Benbrook Texas Limited Partnership, 8028 Wichita Street, Fort Worth, Texas 76140<br/> Mr. Christopher J. Pollock, President, Benbrook Texas Limited Partnership, 8028 Wichita Street, Fort Worth, Texas 76140<br/> <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p> |   |  |

| VIOLATION SUMMARY CHART:  |   |  |
|---|---|--|
| VIOLATION INFORMATION   | PENALTY CONSIDERATIONS  | CORRECTIVE ACTIONS TAKEN/REQUIRED  |
| <p><b>Type of Investigation:</b><br/> <input type="checkbox"/> Complaint<br/> <input type="checkbox"/> Routine<br/> <input type="checkbox"/> Enforcement Follow-up<br/> <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> January 23, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> April 9, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a records review.</p> <p><b>WATER</b></p> <p>Failed to comply with permitted effluent limits for total suspended solids, flow, chlorine, and biochemical oxygen demand [30 TEX. ADMIN. CODE § 305.125(1), Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014792001 Effluent Limitations and Monitoring Requirements Nos. 1 and 2, and TEX. WATER CODE § 26.121(a)(1)].</p> | <p><b>Total Assessed:</b> \$21,200</p> <p><b>Total Deferred:</b> \$17,600<br/> <input checked="" type="checkbox"/> Expedited Settlement<br/> <input checked="" type="checkbox"/> Financial Inability to Pay</p> <p>The Financial Assurance Section of the Commission's Financial Administration Division reviewed financial documentation submitted by the Respondent and determined that the Respondent is unable to pay part of the administrative penalty.</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$100 (remaining \$3,500 due in 35 monthly payments of \$100 each)</p> <p><b>Site Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Orders Justification:</b></p> <p>Human health or the environment has been exposed to pollutants which exceed levels that are protective.</p> | <p><b>Ordering Provisions:</b></p> <p>Within 90 days after the effective date of this Agreed Order, submit written compliance with the effluent limits of TPDES Permit No. WQ0014792001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.</p> |

Additional ID No(s): TPDES Permit No. WQ0014792001 / TX0093092



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

|              |          |             |           |             |         |  |
|--------------|----------|-------------|-----------|-------------|---------|--|
| <b>DATES</b> | Assigned | 13-Apr-2009 | Screening | 24-Apr-2009 | EPA Due |  |
|              | PCW      | 30-Jun-2010 |           |             |         |  |

|  |                                    |
|--|------------------------------------|
| <b>RESPONDENT/FACILITY INFORMATION</b> |                                    |
| Respondent                             | Benbrook Texas Limited Partnership |
| Reg. Ent. Ref. No.                     | RN102963238                        |
| Facility/Site Region                   | 4-Dallas/Fort Worth                |
| Major/Minor Source                     | Minor                              |

|                                 |                 |                       |                    |
|---------------------------------|-----------------|-----------------------|--------------------|
| <b>CASE INFORMATION</b>         |                 |                       |                    |
| Enf./Case ID No.                | 37517           | No. of Violations     | 2                  |
| Docket No.                      | 2009-0628-MWD-E | Order Type            | Findings           |
| Media Program(s)                | Water Quality   | Government/Non-Profit | No                 |
| Multi-Media                     |                 | Enf. Coordinator      | Evette Alvarado    |
|                                 |                 | 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** \$8,000

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** 180.0% Enhancement **Subtotals 2, 3, & 7** \$14,400

Notes: The Respondent has two 1660-Orders, two NOV's for the same violations, and 26 months of self-reported effluent violations.

**Culpability** No 0.0% Enhancement **Subtotal 4** \$0

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** \$0

**Economic Benefit** 0.0% Enhancement **Subtotal 6** \$0

Total EB Amounts \$1,165  
 Approx. Cost of Compliance \$5,000  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$22,400

**OTHER FACTORS AS JUSTICE MAY REQUIRE** -5.4% **Adjustment** -\$1,200

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommend reduction in penalty so that monthly self-reported violations do not overly impact the penalty amount.

**Final Penalty Amount** \$21,200

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$21,200

**DEFERRAL** 0.0% Reduction **Adjustment** \$0

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

Notes: No deferral is recommended for Findings Orders.

**PAYABLE PENALTY** **\$21,200**

Screening Date: 24-Apr-2009

Docket No.: 2009-0626-MWD-E

PCW

Respondent: Benbrook Texas Limited Partnership

Policy Revision 2 (September 2002)

Case ID No.: 37517

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN102963238

Media [Statute]: Water Quality

Enf. Coordinator: Evette Alvarado

### 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)  | 28                | 140%    |
|                               | Other written NOVs   | 0                 | 0%      |
| 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 judgments or consent decrees meeting criteria)  | 0                 | 0%      |
|                               | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government  | 0                 | 0%      |
| Convictions                   | Any criminal convictions of this state or the federal government (number of counts)  | 0                 | 0%      |
| Emissions                     | Chronic excessive emissions events (number of events)  | 0                 | 0%      |
| Audits                        | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)              | 0                 | 0%      |
|                               | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)   | 0                 | 0%      |
| Please Enter Yes or No        |  |                   |         |
| Other                         | Environmental management systems in place for one year or more   | No                | 0%      |
|                               | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program  | No                | 0%      |
|                               | Participation in a voluntary pollution reduction program   | No                | 0%      |
|                               | Early compliance with, or offer of a product that meets future state or federal government environmental requirements  | No                | 0%      |

Adjustment Percentage (Subtotal 2) 180%

>> 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 has two 1660 Orders, two NOVs for the same violations, and 26 months of self-reported effluent violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 180%

**Screening Date:** 24-Apr-2009      **Docket No.:** 2009-0628-MWD-E      **PCW**  
**Respondent:** Benbrook Texas Limited Partnership      *Policy Revision 2 (September 2002)*  
**Case ID No.:** 37517      *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.:** RN102963238  
**Media [Statute]:** Water Quality  
**Enf. Coordinator:** Evette Alvarado

**Violation Number:** 1  
**Rule Cite(s):** 30 Tex. Admin. Code § 305.125(1), Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014792001 Effluent Limitations and Monitoring Requirements Nos. 1 and 2, and Tex. Water Code § 26.121(a)(1)  
**Violation Description:** Failed to comply with permitted effluent limits as documented during a record review on January 13, 2009 and shown in the attached table.

**Base Penalty:** \$10,000

**>> Environmental, Property and Human Health Matrix**

|           |             |       |          |                     |
|-----------|-------------|-------|----------|---------------------|
| <b>OR</b> | <b>Harm</b> |       |          |                     |
|           | Release     | Major | Moderate | Minor               |
|           | Actual      |       |          | x                   |
|           | Potential   |       |          |                     |
|           |             |       |          | <b>Percent:</b> 10% |

**>> Programmatic Matrix**

|               |       |          |       |                    |
|---------------|-------|----------|-------|--------------------|
| Falsification | Major | Moderate | Minor |                    |
|               |       |          |       | <b>Percent:</b> 0% |

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

**Adjustment:** \$9,000

\$1,000

**Violation Events**

**Number of Violation Events:** 3      **Number of violation days:** 246

|                                |              |   |
|--------------------------------|--------------|---|
| <i>mark only one with an x</i> | daily        |   |
|                                | weekly       |   |
|                                | monthly      |   |
|                                | quarterly    | x |
|                                | semiannual   |   |
|                                | annual       |   |
|                                | single event |   |

**Violation Base Penalty:** \$3,000

Three quarterly events are recommended for the violations that occurred in November 2007, December 2007, January 2008, June 2008, July 2008, August 2008, and October 2008.

**Good Faith Efforts to Comply**

**0.0% Reduction:** Before NOV      NOV to EDRP/Settlement      \$0

|               |   |               |
|---------------|---|---------------|
| Extraordinary |   |               |
| Ordinary      |   |               |
| N/A           | x | (mark with x) |

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

**Violation Subtotal:** \$3,000

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount:** \$1,165

**Violation Final Penalty Total:** \$7,950

**This violation Final Assessed Penalty (adjusted for limits):** \$7,950

## Economic Benefit Worksheet

**Respondent:** Benbrook Texas Limited Partnership  
**Case ID No.:** 37517  
**Reg. Ent. Reference No.:** RN102963238  
**Media:** Water Quality  
**Violation No.:** 1

| Percent Interest: | Years of Depreciation: |
|-------------------|------------------------|
| 5.0               | 15                     |

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

### Delayed Costs

|                          |         |            |             |      |      |         |         |
|--------------------------|---------|------------|-------------|------|------|---------|---------|
| Equipment                |         |            |             | 0.00 | \$0  | \$0     | \$0     |
| Buildings                |         |            |             | 0.00 | \$0  | \$0     | \$0     |
| Other (as needed)        |         |            |             | 0.00 | \$0  | \$0     | \$0     |
| Engineering/construction | \$5,000 | 1-Nov-2007 | 28-Feb-2011 | 3.33 | \$55 | \$1,110 | \$1,165 |
| 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

This is the estimated cost to evaluate the treatment units and determine the causes for the Facility's noncompliance. The date required is the date the noncompliance began and the final date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$1,165

Screening Date 24-Apr-2009

Docket No. 2009-0628-MWD-E

PCW

Respondent Benbrook Texas Limited Partnership

Policy Revision 2 (September 2002)

Case ID No. 37517

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN102963238

Media [Statute] Water Quality

Enf. Coordinator Evette Alvarado

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1), TPDES Permit No. WQ0014792001 Effluent Limitations and Monitoring Requirements Nos. 1 and 2, and Tex. Water Code § 26.121(a)(1)

Violation Description Failed to comply with permitted effluent limits as documented during a record review on January 13, 2009 and shown in the attached table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

| Release   | Harm  |          |       |
|-----------|-------|----------|-------|
|           | Major | Moderate | Minor |
| Actual    | x     |          |       |
| Potential |       |          |       |

Percent 50%

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---------------|-------|----------|-------|
|               |       |          |       |

Percent 0%

Matrix Notes

A simplified model was utilized to evaluate the values for biochemical oxygen demand and flow to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Total suspended solids and chlorine residual were also analyzed. The amounts discharged at the time of the violations were significant and exceeded levels protective of human health or the environment.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 1

30 Number of violation days

|              |   |
|--------------|---|
| daily        |   |
| weekly       |   |
| monthly      | x |
| quarterly    |   |
| semiannual   |   |
| annual       |   |
| single event |   |

mark only one with an x

Violation Base Penalty \$5,000

One monthly event is recommended for the violation that occurred in September 2008.

Good Faith Efforts to Comply

0.0% Reduction

\$0

|               | Before NOV | NOV to EDPRP/Settlement Offer |
|---------------|------------|-------------------------------|
| Extraordinary |            |                               |
| Ordinary      |            |                               |
| N/A           | x          | (mark with x)                 |

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

Violation Subtotal \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$13,250

This violation Final Assessed Penalty (adjusted for limits) \$13,250

## Economic Benefit Worksheet

**Respondent:** Benbrook Texas Limited Partnership  
**Case ID No.:** 37517  
**Reg. Ent. Reference No.:** RN102963238  
**Media:** Water Quality  
**Violation No.:** 2

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0              | 15                    |

| Item Description               | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| <small>No commas or \$</small> |           |               |            |     |                |               |           |

### Delayed Costs

|                          |  |  |  |      |     |     |     |
|--------------------------|--|--|--|------|-----|-----|-----|
| Equipment                |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Buildings                |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed)        |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Engineering/construction |  |  |  | 0.00 | \$0 | \$0 | \$0 |
| Land                     |  |  |  | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System    |  |  |  | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling        |  |  |  | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal     |  |  |  | 0.00 | \$0 | n/a | \$0 |
| Permit Costs             |  |  |  | 0.00 | \$0 | n/a | \$0 |
| Other (as needed)        |  |  |  | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

See Economic Benefit Worksheet for Violation No. 1.

### 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

\$0

**TOTAL**

\$0

| EFFLUENT VIOLATION TABLE  |                            |        |        |        |        |        |        |        |
|---|----------------------------|--------|--------|--------|--------|--------|--------|--------|
| Benbrook Texas Limited Partnership<br>TPDES Permit No. WQ0014792001<br>Docket No. 2009-0628-MWD-E |                            |        |        |        |        |        |        |        |
| Permitted Effluent Limits   | Monitoring Period End Date |        |        |        |        |        |        |        |
|   | Nov-07                     | Dec-07 | Jan-08 | Jun-08 | Jul-08 | Aug-08 | Sep-08 | Oct-08 |
| TSS daily avg. loading<br>4.4 lbs/day   | c                          | c      | c      | c      | c      | c      | 5.2    | c      |
| TSS daily avg. conc.<br>15 mg/L   | 15.5                       | 21.2   | 22.17  | c      | c      | c      | 25.8   | 15.2   |
| Flow daily avg.<br>0.035 MGD  | c                          | c      | c      | c      | .04    | c      | c      | c      |
| Cl residual monthly max.<br>4.0 mg/L  | c                          | c      | c      | c      | c      | c      | 6.1    | 5.2    |
| Cl residual monthly min.<br>1.0 mg/L  | 0.0                        | 0.0    | c      | 0.4    | 0.1    | 0.1    | 0.3    | c      |
| BOD <sub>5</sub> daily avg. loading<br>2.9 lbs/day  | c                          | c      | c      | c      | c      | c      | 7.5    | c      |
| BOD <sub>5</sub> daily avg. conc.<br>10 mg/L  | c                          | c      | c      | c      | c      | c      | 37.6   | c      |
| BOD <sub>5</sub> max. single grab<br>35 mg/L  | c                          | c      | c      | c      | c      | c      | 71     | c      |

avg. = average

c = compliant

BOD<sub>5</sub> = biochemical oxygen demand

conc. = concentration

Cl = Chlorine

lbs/day = pounds per day

max. = maximum

TSS = Total suspended solids

min. = minimum

MGD = million gallons per day

mg/L = milligrams per liter



## Compliance History Report

Customer/Respondent/Owner-Operator: CN603181231 Benbrook Texas Limited Partnership Classification: AVERAGE Rating: 6.09  
Regulated Entity: RN102963238 BENBROOK TEXAS LIMITED PARTNERSHIP Classification: AVERAGE Site Rating: 6.09  
ID Number(s): WASTEWATER PERMIT WQ0014798001  
WASTEWATER EPA ID TX0093082  
WASTEWATER PERMIT TX0093082  
WASTEWATER LICENSING LICENSE WQ0012723001  
Location: LOCATED AT 5130 BEN DAY MURRIN RD, LOT 841  
APPROX 0.5 MILE S OF THE INTERSECTION OF  
US HWY 377 AND FM RD 1187, APPRX 16 MI SW OF THE CITY  
OF FORT WORTH'S CENTRAL BUSINESS DISTRICT,  
TARRANT COUNTY  
TCEQ Region: REGION 4 – DFW METROPLEX  
Date Compliance History Prepared: April 14, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: April 14, 2004 to April 14, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Evette Alvarado Phone: 512 - 239 - 2573

### 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? Yes
3. If Yes, who is the current owner? Benbrook Texas Limited Partnership
4. If Yes, who was/were the prior owner(s)? Benbrook, LLC
5. When did the change(s) in ownership occur? May 1, 2007
6. Rating Date: 9/1/2008 Repeat Violator: NO

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.

Effective Date: 08/28/2006

ADMINORDER 2005-1337-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 as documented by a TCEQ record review of self-reported date.

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(17)

Rqmt Prov: Self-reporting Requirements, PERMIT

Description: Failure to submit monitoring results at the intervals specified in the permit as documented by a TCEQ record review. Specifically, Benbrook failed to submit the total suspended solids daily average concentration results in November and December 2004.

September 1, 2004

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(17)

Rqmt Prov: Monitoring and Reporting Requirements PERMIT

Description: Failure to submit monitoring results at the intervals specified in the permit. Specifically, Benbrook failed to submit the annual sludge discharge monitoring report that was due on September 1, 2004.

Effective Date: 02/08/2008

ADMINORDER 2007-0371-MWD-E

Classification: Moderate

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

Rqmt Prov: WQ0012723-001 PERMIT

Description: Failure to submit the Annual Sludge Report (ASR) for FY06 by September 1, 2006.

Classification: Major

Citation: 30 TAC Chapter 305, SubChapter F 305.42(a)

Rqmt Prov: TWC Chapter 26 26.121

Description: Failure to operate with a current permit.

- 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  | 04/14/2004 | (319298)  |
| 2  | 04/14/2004 | (319299)  |
| 3  | 04/14/2004 | (319307)  |
| 4  | 06/14/2004 | (362287)  |
| 5  | 09/24/2004 | (362286)  |
| 6  | 09/24/2004 | (362288)  |
| 7  | 09/24/2004 | (362289)  |
| 8  | 09/24/2004 | (362290)  |
| 9  | 09/24/2004 | (362291)  |
| 10 | 10/11/2004 | (336436)  |
| 11 | 11/01/2004 | (387699)  |
| 12 | 11/29/2004 | (397634)  |
| 13 | 12/16/2004 | (344234)  |
| 14 | 01/10/2005 | (387635)  |
| 15 | 01/24/2005 | (387636)  |
| 16 | 01/28/2005 | (347889)  |
| 17 | 02/28/2005 | (387631)  |
| 18 | 03/23/2005 | (387632)  |
| 19 | 04/27/2005 | (425336)  |
| 20 | 05/19/2005 | (425337)  |
| 21 | 07/14/2005 | (4380663) |
| 22 | 07/15/2005 | (445920)  |
| 23 | 07/21/2005 | (425338)  |
| 24 | 10/10/2005 | (477923)  |
| 25 | 10/26/2005 | (477924)  |
| 26 | 10/27/2005 | (477922)  |
| 27 | 11/28/2005 | (477925)  |
| 28 | 04/25/2006 | (477926)  |
| 29 | 02/27/2006 | (477920)  |
| 30 | 03/27/2006 | (477921)  |
| 31 | 04/30/2006 | (504348)  |
| 32 | 05/25/2006 | (504349)  |
| 33 | 06/19/2006 | (504350)  |
| 34 | 08/31/2006 | (526680)  |
| 35 | 09/29/2006 | (526681)  |

36 10/30/2006 (626217)  
 37 02/12/2007 (539298)  
 38 03/05/2007 (626219)  
 39 03/05/2007 (626220)  
 40 03/08/2007 (626209)  
 41 03/27/2007 (626210)  
 42 05/03/2007 (626211)  
 43 08/30/2007 (626212)  
 44 08/30/2007 (626213)  
 45 09/21/2007 (626215)  
 46 09/21/2007 (626216)  
 47 10/31/2008 (626214)  
 48 01/14/2008 (626218)  
 49 03/03/2008 (694238)  
 50 03/03/2008 (694241)  
 51 03/03/2008 (694242)  
 52 03/28/2008 (694239)  
 53 04/30/2008 (624240)  
 54 06/23/2008 (715606)  
 55 07/14/2008 (715607)  
 56 08/04/2008 (715608)  
 57 09/17/2008 (715609)  
 58 03/25/2009 (726664)  
 59 04/09/2009 (723651)

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

Date: 04/30/2004 (362287)  
 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: 05/31/2004 (362288)  
 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: 06/30/2004 (362289)  
 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: 07/31/2004 (362290)  
 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: 08/31/2004 (362291)  
 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 (387633)  
 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: 10/12/2004 (336436)  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)  
 30 TAC Chapter 317 317.5(b)  
 Description: Failure to maintain treatment unit  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(4)  
 30 TAC Chapter 305, SubChapter F 305.125(5)  
 TWC Chapter 26 26.121  
 TWC Chapter 26 26.121(a)  
 TWC Chapter 26 26.121(a)(1)  
 TWC Chapter 26 26.121(a)(2)  
 TWC Chapter 26 26.121(a)(3)  
 TWC Chapter 26 26.121(b)  
 TWC Chapter 26 26.121(c)  
 TWC Chapter 26 26.121(d)  
 TWC Chapter 26 26.121(e)  
 Description: Unauthorized discharge  
 Self Report? NO Classification: Minor  
 Rqmt Prov: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet permitted minimum limit for total chlorine residual.  
 Self Report? NO Classification: Moderate  
 Rqmt Prov: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to comply with permitted limits for BOD5, TSS, DO, and CL2.  
 Self Report? NO Classification: Minor  
 Rqmt Prov: 30 TAC Chapter 319, SubChapter A 319.7(c)  
 Description: Failure to retain recoprds  
 Self Report? NO Classification: Minor  
 Rqmt Prov: 30 TAC Chapter 305, SubChapter F 305.125(f)  
 Description: Sludge deposits in receiving stream

Date: 12/31/2004 (387636)  
 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 (425336)  
 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 (425337)  
 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 (445920)  
 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 (477925)  
 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 (504349)  
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 (626219) CN603181231  
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: 02/28/2007 (626210) CN603181231  
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: 03/31/2007 (626211) CN603181231  
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: 04/30/2007 (626212) CN603181231  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date: 05/31/2007 (626213) CN603181231  
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 (626218) CN603181231  
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 (624241) CN603181231  
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 (694242) CN603181231  
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: 01/31/2008 (694238) CN603181231  
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 (715608) CN603181231  
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 (715609) CN603181231  
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 CN603181231  
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 CN603181231  
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 CN603181231  
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: 03/30/2009 (726664)  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)  
30 TAC Chapter 317, 317.5(b)

Description: Failure to maintain treatment unit  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)  
30 TAC Chapter 317 317.4(g)

Description: Failure to maintain treatment unit  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(4)  
30 TAC Chapter 305, SubChapter F 305.125(5)

TWC Chapter 26 26.121  
TWC Chapter 26 26.121(a)  
TWC Chapter 26 26.121(a)(1)  
TWC Chapter 26 26.121(a)(2)  
TWC Chapter 26 26.121(a)(3)  
TWC Chapter 26 26.121(b)  
TWC Chapter 26 26.121(c)  
TWC Chapter 26 26.121(d)  
TWC Chapter 26 26.121(e)

Description: Unauthorized discharge  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet permitted minimum limit of total chlorine residual.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to comply with permitted limits for BOD5, TSS, DO, and CL2

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Sludge deposits in receiving stream

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 305, SubChapter F 305.125(5)

Description: Operational Requirements PERMIT  
 Failure to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Monitoring and Reporting Req. PERMIT  
 Description: Failure to provide notification of effluent permit limit violations.  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 319, SubChapter A 319.11(b)  
 Description: Failure to perform the manganese oxide correction for each total chlorine residual analysis.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Other Requirements PERMIT  
 Description: Failure to provide an effluent filter as required by permit.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to maintain compliance with the permit limits for daily average flow.  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 319, SubChapter A 319.11(d)  
 Description: Failure to provide staff gauge to measure effluent flow rate at the outfall.

- 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  
BENBROOK TEXAS LIMITED  
PARTNERSHIP  
RN102963238

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2009-0628-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 Benbrook Texas Limited Partnership ("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 5130 Ben Day Murrin Road, Lot 841, approximately 0.5 mile south of the intersection of United States Highway

377 and Farm-to-Market Road 1187, approximately 16 miles southwest of Fort Worth's central business district in Tarrant County, Texas (the "Facility").

2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During a record review on January 23, 2009, TCEQ staff documented that the Respondent did not comply with the permitted effluent limits as shown in the table below:

| <b>EFFLUENT VIOLATION TABLE</b>   |                            |        |        |        |        |        |        |        |
|---|----------------------------|--------|--------|--------|--------|--------|--------|--------|
| Benbrook Texas Limited Partnership<br>TPDES Permit No. WQ0014792001<br>Docket No. 2009-0628-MWD-E |                            |        |        |        |        |        |        |        |
| Permitted Effluent Limits   | Monitoring Period End Date |        |        |        |        |        |        |        |
|   | Nov-07                     | Dec-07 | Jan-08 | Jun-08 | Jul-08 | Aug-08 | Sep-08 | Oct-08 |
| TSS daily avg. loading<br>4.4 lbs/day   | c                          | c      | c      | c      | c      | c      | 5.2    | c      |
| TSS daily avg. conc.<br>15 mg/L   | 15.5                       | 21.2   | 22.17  | c      | c      | c      | 25.8   | 15.2   |
| Flow daily avg.<br>0.035 MGD  | c                          | c      | c      | c      | .04    | c      | c      | c      |
| Cl residual monthly max.<br>4.0 mg/L  | c                          | c      | c      | c      | c      | c      | 6.1    | 5.2    |
| Cl residual monthly min.<br>1.0 mg/L  | 0.0                        | 0.0    | c      | 0.4    | 0.1    | 0.1    | 0.3    | c      |
| BOD <sub>5</sub> daily avg. loading<br>2.9 lbs/day  | c                          | c      | c      | c      | c      | c      | 7.5    | c      |
| BOD <sub>5</sub> daily avg. conc.<br>10 mg/L  | c                          | c      | c      | c      | c      | c      | 37.6   | c      |
| BOD <sub>5</sub> max. single grab<br>35 mg/L  | c                          | c      | c      | c      | c      | c      | 71     | c      |

avg. = average  
 conc. = concentration  
 max. = maximum  
 lbs/day = pounds per day  
 TSS = Total suspended solids  
 MGD = million gallons per day  
 BOD<sub>5</sub> = biochemical oxygen demand  
 mg/L = milligrams per liter

c = compliant  
 Cl = chlorine  
 min. = minimum

4. The Respondent received notice of the violations on April 13, 2009.

## 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 comply with permitted effluent limits, in violation of 30 TEX. ADMIN. CODE § 305.125(1), Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014792001 Effluent Limitations and Monitoring Requirements Nos. 1 and 2, and TEX. WATER CODE § 26.121(a)(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 Twenty-One Thousand Two Hundred Dollars (\$21,200) 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. The Financial Assurance Section of the Commission's Financial Administration Division reviewed financial documentation submitted by the Respondent and determined that the Respondent is unable to pay part of the administrative penalty. Therefore, Seventeen Thousand Six Hundred Dollars (\$17,600) of the penalty is deferred contingent upon the Respondent'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 Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The Respondent has paid One Hundred Dollars (\$100) of the undeferred administrative penalty. The remaining amount of Three Thousand Five Hundred Dollars (\$3,500) of the administrative penalty shall be payable in 35 monthly payments of One Hundred Dollars (\$100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

### 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 Twenty-One Thousand Two Hundred Dollars (\$21,200) 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: Benbrook Texas Limited Partnership, Docket No. 2009-0628-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 Respondent shall, within 90 days after the effective date of this Agreed Order, submit written compliance with the effluent limits of TPDES Permit No. WQ0014792001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall include detailed supporting documentation including receipts, and/or other records to demonstrate compliance, 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 fine 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  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

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.

Benbrook Texas Limited Partnership

DOCKET NO. 2009-0628-MWD-E

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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

  
\_\_\_\_\_  
For the Executive Director

\_\_\_\_\_  
Date 10/11/2010

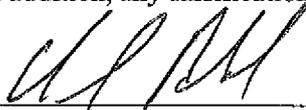
I, the undersigned, have read and understand the attached Agreed Order in the matter of Benbrook Texas Limited Partnership. I am authorized to agree to the attached Agreed Order on behalf of Benbrook Texas Limited Partnership, and do agree to the specified terms and conditions. I further acknowledge 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, Benbrook Texas Limited Partnership 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.

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 10/13/10

CHRISTOPHER S. POWELL  
Name (Printed or typed)  
Authorized Representative of  
Benbrook Texas Limited Partnership

\_\_\_\_\_  
Title PRESIDENT

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

