

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2010-0763-MWD-E **TCEQ ID:** RN101608099 **CASE NO.:** 39668  
**RESPONDENT NAME:** City of New Waverly

<b>ORDER TYPE:</b>		
<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	
<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> Sewer Treatment Plant 1, located on the west bank of Chicken Creek, approximately 1,600 feet south of the intersection of the Chicken Creek to State Highway 150, Walker 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 September 27, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732  <b>TCEQ Enforcement Coordinator:</b> Ms. Jennifer Graves, Enforcement Division, Enforcement Team 1, MC R-15, (956) 430-6023; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> The Honorable Dan Underwood, Mayor, City of New Waverly, Post Office Box 753, New Waverly, Texas 77358  <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>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <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> April 6, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> April 29, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a records review.</p> <p><b>WATER</b></p> <p>Failed to comply with the permitted effluent limitations for ammonia nitrogen [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System Permit No. WQ0011020001, Effluent Limitations and Monitoring Requirements No. 1].</p>	<p><b>Total Assessed:</b> \$2,040</p> <p><b>Total Deferred:</b> \$408  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$1,632</p> <p><b>Total Paid to General Revenue:</b> \$0</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Site Compliance History Classification</b>  <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>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. By January 11, 2010, consulted with an engineer to determine that excursions were due to cold weather; and</p> <p>b. By February 28, 2010, returned to compliance with the permitted effluent limitations.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p>

Additional ID No(s): WQ0011020001

**Attachment A**  
**Docket Number: 2010-0763-MWD-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** City of New Waverly

**Payable Penalty Amount:** One Thousand Six Hundred Thirty-Two Dollars (\$1,632)

**SEP Amount:** One Thousand Six Hundred Thirty-Two Dollars (\$1,632)

**Type of SEP:** Pre-approved

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

**Location of SEP:** Walker County

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

**1. Project Description**

A. Project

The Respondent shall contribute to the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Texas Association of Resource Conservation and Development Areas, Inc. to be used for the RC&D Unauthorized Trash Dump Clean-Up Program as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to coordinate with city and/or county governmental officials regarding the clean up of sites where trash has been disposed of illegally. Eligible sites will be limited to those where a responsible party can not be identified and where there is no pre-existing obligation to clean up the site by the owner or the government. Additionally, reasonable efforts must have already been taken to prevent the dumping. SEP monies will be used to pay for the direct cost of collection and disposal of debris. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by helping rid communities of the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.



C. Minimum Expenditure

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

**2. Performance Schedule**

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

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

**3. Records and Reporting**

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

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

**4. Failure to Fully Perform**

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

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.



**5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	Assigned	3-May-2010	Screening	12-May-2010	EPA Due	
	PCW	12-May-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	City of New Waverly		
Reg. Ent. Ref. No.	RN101608098		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	39668	No. of Violations	1
Docket No.	2010-0763-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Jennifer Graves
		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 \$2,000

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

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

**Compliance History** 27.0% Enhancement Subtotals 2, 3, & 7 \$540

Notes: Enhancement due to five monthly self-reported effluent violations and one NOV with unrelated 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 \$500

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

Total EB Amounts \$23  
 Approx. Cost of Compliance \$1,000  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal \$2,040

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 0.0% Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** \$2,040

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty \$2,040

**DEFERRAL** 20.0% Reduction Adjustment -\$408

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** \$1,632

Screening Date: 12-May-2010

Docket No.: 2010-0763-MWD-E

PCW

Respondent: City of New Waverly

Policy Revision 2 (September 2002)

Case ID No.: 39668

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN101608099

Media [Statute]: Water Quality

Enf. Coordinator: Jennifer Graves

### 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)	5	25%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 27%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement due to five monthly self-reported effluent violations and one NOV with unrelated violations.

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

Screening Date 12-May-2010

Docket No. 2010-0763-MWD-E

PCW

Respondent City of New Waverly

Policy Revision 2 (September 2002)

Case ID No. 39668

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101608099

Media [Statute] Water Quality

Enf. Coordinator Jennifer Graves

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011020001, Effluent Limitations and Monitoring Requirements No. 1

Violation Description

Failed to comply with the permitted effluent limitations as documented during a record review on April 6, 2010, and shown in the attached violation table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

A simplified model was used to evaluate ammonia-nitrogen to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Flow was also considered. As a result of these discharges, 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.

Adjustment \$8,000

\$1,000

Violation Events

Number of Violation Events 2

120 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,000

Two quarterly events are recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$600

	Before NOV	NOV to EDPRP/Settlement
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes The Respondent achieved compliance by February 28, 2010.

Violation Subtotal \$1,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$23

Violation Final Penalty Total \$2,040

This violation Final Assessed Penalty (adjusted for limits) \$2,040

# Economic Benefit Worksheet

**Respondent** City of New Waverly  
**Case ID No.** 39668  
**Reg. Ent. Reference No.** RN101608099  
**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	\$1,000	31-Oct-2009	28-Feb-2010	0.33	\$1	\$22	\$23
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

Estimated cost to consult an engineer to determine the cause of noncompliance was due to cold weather. Date required is the initial month of noncompliance. Final date is the date of compliance.

**Avoided Costs**

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$23

**EFFLUENT VIOLATION TABLE****City of New Waverly****TPDES Permit No. WQ0011020001****Docket No. 2010-0763-MWD-E**

	<b>Flow</b>	<b>NH<sub>3</sub>-N Daily Avg. Conc.</b>	<b>NH<sub>3</sub>-N Daily Avg. Loading</b>	<b>NH<sub>3</sub>-N Single Grab</b>
<b>Months</b>	Limit = 0.088 MGD	Limit = 3.0 mg/L	Limit = 2.2 lbs/day	Limit = 15 mg/L
<b>10/31/2009</b>	<b>0.089</b>	<b>c</b>	<b>c</b>	<b>c</b>
<b>12/31/2009</b>	<b>c</b>	<b>5.35</b>	<b>c</b>	<b>c</b>
<b>1/31/2010</b>	<b>c</b>	<b>8.30</b>	<b>2.22</b>	<b>20.0</b>

MGD = million gallons per day

NH<sub>3</sub>-N = ammonia nitrogen

avg. = average

mg/L = milligrams per liter

lbs/day = pounds per day

Conc. = concentration

c = compliant



# Compliance History Report

Customer/Respondent/Owner-Operator: CN600680326 City of New Waverly Classification: AVERAGE Rating: 0.34  
Regulated Entity: RN101608099 SEWER TREATMENT PLANT 1 Classification: AVERAGE Site Rating: 0.36  
ID Number(s): WASTEWATER PERMIT WQ0011020001  
WASTEWATER PERMIT TPDES0056685  
WASTEWATER PERMIT TX0056685  
WASTEWATER LICENSING LICENSE WQ0011020001  
Location: ON THE W BANK OF CHICKEN CREEK, APPROX.  
1,600 F S OF THE INTX OF THE CHICKEN CREEK  
TO STATE HWY 150 IN WALKER COUNTY, TX  
TCEQ Region: REGION 12 - HOUSTON  
Date Compliance History Prepared: May 05, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: May 05, 2005 to May 05, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Jennifer Graves Phone: (956) 430-6023

## 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: 9/1/2009 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.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
  - 1 05/12/2005 (422688)
  - 2 06/13/2005 (422689)
  - 3 07/15/2005 (443595)
  - 4 08/12/2005 (443598)
  - 5 08/25/2005 (443596)
  - 6 09/06/2005 (397907)
  - 7 09/13/2005 (443597)
  - 8 10/03/2005 (473613)
  - 9 11/14/2005 (473614)
  - 10 12/19/2005 (473615)
  - 11 01/09/2006 (473616)
  - 12 02/10/2006 (473611)
  - 13 03/17/2006 (473612)
  - 14 04/10/2006 (501691)
  - 15 05/10/2006 (501692)
  - 16 06/12/2006 (501693)
  - 17 07/13/2006 (523961)

18 08/30/2006 (523962)  
 19 09/12/2006 (523963)  
 20 10/16/2006 (548961)  
 21 11/15/2006 (548962)  
 22 12/11/2006 (548963)  
 23 01/08/2007 (582351)  
 24 02/14/2007 (582346)  
 25 03/12/2007 (582347)  
 26 04/20/2007 (582348)  
 27 05/16/2007 (582349)  
 28 06/14/2007 (582350)  
 29 07/24/2007 (603562)  
 30 08/13/2007 (603563)  
 31 08/30/2007 (573342)  
 32 09/10/2007 (568524)  
 33 09/14/2007 (603564)  
 34 10/15/2007 (622116)  
 35 11/16/2007 (622117)  
 36 12/13/2007 (622118)  
 37 01/14/2008 (673928)  
 38 02/12/2008 (673927)  
 39 03/17/2008 (692187)  
 40 04/08/2008 (640850)  
 41 04/10/2008 (692188)  
 42 04/15/2008 (646294)  
 43 05/16/2008 (692189)  
 44 06/13/2008 (713279)  
 45 07/14/2008 (713280)  
 46 08/13/2008 (713282)  
 47 08/25/2008 (713281)  
 48 09/30/2008 (729387)  
 49 10/14/2008 (729388)  
 50 11/18/2008 (729389)  
 51 12/15/2008 (729390)  
 52 01/12/2009 (752596)  
 53 02/12/2009 (752595)  
 54 03/11/2009 (770211)  
 55 04/15/2009 (770212)  
 56 05/15/2009 (770213)  
 57 04/29/2010 (798385)

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

Date: 01/31/2007 (582346) CN600680326  
 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: 07/31/2007 (603563) CN600680326  
 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: 09/10/2007 (568524) CN600680326  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
MRR, No. 5, p. 5 PERMIT  
Description: Failure to ensure flow measurement accuracy.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 319, SubChapter A 319.7(c)  
MRR, No. 1, p. 4 PERMIT  
Description: Failure to accurately complete the discharge monitoring reports (DMRs).

Date: 10/31/2009 (798385) CN600680326  
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: 012/31/2009 (798385) CN600680326  
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: 1/31/2010 (798385) CN600680326  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

- F. Environmental audits.
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF NEW WAVERLY  
RN101608099**

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

## **AGREED ORDER DOCKET NO. 2010-0763-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 New Waverly ("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 appear before the Commission and together stipulate that:

1. The Respondent owns and operates a wastewater treatment plant located on the west bank of Chicken Creek, approximately 1,600 feet south of the intersection of the Chicken Creek to State Highway 150 in Walker 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. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 4, 2010.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Two Thousand Forty Dollars (\$2,040) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Four Hundred Eight Dollars (\$408) is deferred contingent upon the Respondent's timely and

- satisfactorily 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, the Executive Director may require the Respondent to pay all or part of the deferred penalty. One Thousand Six Hundred Thirty-Two Dollars (\$1,632) of the administrative penalty shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").
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 Respondent 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 Respondent has implemented the following corrective measures at the Facility:
    - a. By January 11, 2010, consulted with an engineer to determine that excursions were due to cold weather; and
    - b. By February 28, 2010, returned to compliance with the permitted effluent limitations.
  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 Respondent 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 Respondent is alleged to have failed to comply with the permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System Permit No. WQ0011020001, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on April 6, 2010, and shown in the following violation table:

<b>EFFLUENT VIOLATION TABLE</b>				
	<b>Flow</b>	<b>NH<sub>3</sub>-N Daily Avg. Conc.</b>	<b>NH<sub>3</sub>-N Daily Avg. Loading</b>	<b>NH<sub>3</sub>-N Single Grab</b>
	Limit = 0.088 MGD	Limit = 3.0 mg/L	Limit = 2.2 lbs/day	Limit = 15 mg/L
<b>Months</b>				
<b>10/31/2009</b>	0.089	c	c	c
<b>12/31/2009</b>	c	5.35	c	c
<b>1/31/2010</b>	c	8.30	2.22	20.0
MGD = million gallons per day		lbs/day = pounds per day		
NH <sub>3</sub> N = ammonia nitrogen		Conc. = concentration		
avg. = average		c = compliant		
mg/L = milligrams per liter				

### III. DENIALS

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

### IV. ORDERING PROVISIONS

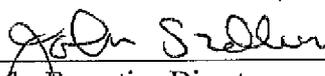
- It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations 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 New Waverly, Docket No. 2010-0763-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
- The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, One Thousand Six Hundred Thirty-Two Dollars (\$1,632) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
- 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. 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.
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 Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, 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

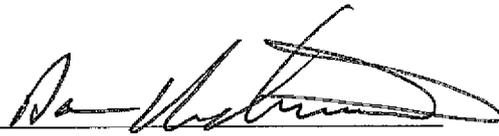
\_\_\_\_\_  
Date 9/24/2010

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

\_\_\_\_\_  
Date 7/27/2010

\_\_\_\_\_  
Dan Underwood  
Name (Printed or typed)  
Authorized Representative of  
City of New Waverly

\_\_\_\_\_  
Mayor  
Title

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



Attachment A  
Docket Number: 2010-0763-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

<b>Respondent:</b>	<b>City of New Waverly</b>
<b>Payable Penalty Amount:</b>	<b>One Thousand Six Hundred Thirty-Two Dollars (\$1,632)</b>
<b>SEP Amount:</b>	<b>One Thousand Six Hundred Thirty-Two Dollars (\$1,632)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>Texas Association of Resource Conservation and Development Areas, Inc. ("RC&amp;D")- Unauthorized Trash Dump Clean-Up</b>
<b>Location of SEP:</b>	<b>Walker County</b>

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

**1. Project Description**

A. Project

The Respondent shall contribute to the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Texas Association of Resource Conservation and Development Areas, Inc. to be used for the RC&D Unauthorized Trash Dump Clean-Up Program as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to coordinate with city and/or county governmental officials regarding the clean up of sites where trash has been disposed of illegally. Eligible sites will be limited to those where a responsible party can not be identified and where there is no pre-existing obligation to clean up the site by the owner or the government. Additionally, reasonable efforts must have already been taken to prevent the dumping. SEP monies will be used to pay for the direct cost of collection and disposal of debris. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by helping rid communities of the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.

C. Minimum Expenditure

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

**2. Performance Schedule**

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

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

**3. Records and Reporting**

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

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

**4. Failure to Fully Perform**

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

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

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

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

**5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

