

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO. 2009-1406-MWD-E RN101612943 CASE NO. 38266**  
**RESPONDENT NAME: CITY OF BYNUM**

<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 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

**SITE WHERE VIOLATION OCCURRED:** Approximately 700 feet northeast of the intersection of State Highway 171 and FM 1242, Bynum, Hill County

**TYPE OF OPERATION:** wastewater treatment facility

**SMALL BUSINESS:** N/A

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired October 11, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Marshall Coover, Litigation Division, MC 175, (512) 239-0620  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Ms. Evette Alvarado, Water Enforcement Section, MC 169, (512) 239-2573

**TCEQ Regional Contact:** Mr. Frank Burleson, Waco Regional Office, MC R-9, (254) 761-3001

**Respondent:** The Honorable Dewey West, Mayor, City of Bynum, P.O. Box 8, Bynum, Texas 76631

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS REQUIRED</b>
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint:</b> None</p> <p><b>Date of Investigation:</b> July 14, 2009</p> <p><b>Date of NOE:</b> July 22, 2009</p> <p><b>Background Facts:</b> The EDP RP was filed on April 26, 2010. Respondent signed the Agreed Order on June 15, 2010.</p> <p><b>Current Compliance Status:</b> Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p><b>MWD:</b> Failed to install and subsequently maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater [30 TEX. ADMIN. CODE § 305.125(1) and (5) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011542001, Operational Requirements No. 4].</p>	<p><b>Total Assessed:</b> \$3,575</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>Total Paid to General Revenue:</b> \$3,575</p> <p>Respondent paid the administrative penalty in full.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person 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>Ordering Provisions:</b></p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 90 days, provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures.</li> <li>2. Within 105 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	24-Jul-2009			
	<b>PCW</b>	8-Mar-2010	<b>Screening</b>	14-Aug-2009	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	City of Bynum				
<b>Reg. Ent. Ref. No.</b>	RN101612943				
<b>Facility/Site Region</b>	9-Waco	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	38266	<b>No. of Violations</b>	1		
<b>Docket No.</b>	2009-1406-MWD-E	<b>Order Type</b>	1660		
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes		
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Evette Alvarado		
		<b>EC's Team</b>	Enforcement Team 1		
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000		

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$2,500</b>
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	43.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$1,075</b>
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Notes: The Respondent has one 1660 order and three NOV's for unrelated violations, one NOV for the same or similar violations, and has six months of self-reported effluent violations.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts: \$1,122  
 Approx. Cost of Compliance: \$16,964  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$3,575</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	<b>\$3,575</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$3,575</b>
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	<b>\$3,575</b>
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**Screening Date** 14-Aug-2009

**Docket No.** 2009-1406-MWD-E

**PCW**

**Respondent** City of Bynum

Policy Revision 2 (September 2002)

**Case ID No.** 38266

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN101612943

**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 ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	9	18%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	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 ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	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 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	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)** 43%

>> **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 one 1660 order and three NOVs for unrelated violations, one NOV for the same or similar violations, and has six months of self-reported effluent violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 43%

**Screening Date** 14-Aug-2009 **Docket No.** 2009-1406-MWD-E **PCW**  
**Respondent** City of Bynum *Policy Revision 2 (September 2002)*  
**Case ID No.** 38266 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101612943  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Evette Alvarado

**Violation Number** 1  
**Rule Cite(s)** 30 Tex. Admin. Code § 305.125(1) and (5) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011542001 Operational Requirements No. 4  
**Violation Description** Failed to install and subsequently maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater, as documented during a record review on July 14, 2009.  
**Base Penalty** \$10,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				
	Potential	x			25%

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0%

**Matrix Notes** Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of this violation.

**Adjustment** \$7,500  
 \$2,500

**Violation Events**

Number of Violation Events 1 30 Number of violation days  
 mark only one with an x  
 daily   
 weekly   
 monthly   
 quarterly   
 semiannual   
 annual   
 single event   
**Violation Base Penalty** \$2,500

One monthly event is recommended from the record review date (July 14, 2009) to the screening date (August 14, 2009).

**Good Faith Efforts to Comply** 0.0% Reduction \$0

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

**Notes** The Respondent is not yet in compliance.

**Violation Subtotal** \$2,500

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

**Estimated EB Amount** \$1,122 **Violation Final Penalty Total** \$3,575  
**This violation Final Assessed Penalty (adjusted for limits)** \$3,575

## Economic Benefit Worksheet

**Respondent** City of Bynum  
**Case ID No.** 38266  
**Reg. Ent. Reference No.** RN101612943  
**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	\$16,964	21-Apr-2009	1-Apr-2010	0.95	\$53	\$1,069	\$1,122
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

This is the cost to rent a standby generator or alternate power source. Date required is the date the violation was first documented and the final date is the anticipated 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

\$16,964

**TOTAL**

\$1,122

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600735831 City of Bynum Classification: AVERAGE Rating: 1.41  
Regulated Entity: RN101612943 CITY OF BYNUM WTP Classification: AVERAGE Site Rating: 1.41  
ID Number(s): WASTEWATER PERMIT WQ0011542001  
WASTEWATER PERMIT TPDES0069043  
WASTEWATER PERMIT TX0069043

Location: WASTEWATER LICENSING LICENSE WQ0011542001  
APPROX 700 FT NE OF INTX OF SH 171 & FM 1242 IN SE  
PORTION OF CITY OF BYNUM, HILL CTY, TX

TCEQ Region: REGION 09 - WACO  
Date Compliance History Prepared: September 09, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: September 09, 2004 to September 09, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Pamela Campbell Phone: 239 - 4493

## 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.

Effective Date: 07/21/2008 ADMINORDER 2008-0045-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 permit effluent limits as documented by a TCEQ record review of self-reported data.

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

- 1 09/12/2004 (358518)
- 2 10/10/2004 (358519)
- 3 11/10/2004 (358520)
- 4 01/05/2005 (385393)
- 5 01/20/2005 (385394)
- 6 02/14/2005 (385391)
- 7 03/14/2005 (385392)
- 8 04/14/2005 (423434)
- 9 05/16/2005 (423435)
- 10 06/17/2005 (423436)
- 11 07/20/2005 (444241)
- 12 08/26/2005 (444242)
- 13 09/15/2005 (444243)
- 14 10/18/2005 (583748)
- 15 11/23/2005 (583750)
- 16 12/30/2005 (583752)
- 17 01/13/2006 (583754)
- 18 02/21/2006 (583734)
- 19 03/21/2006 (583736)
- 20 04/17/2006 (583738)
- 21 05/25/2006 (583740)
- 22 06/26/2006 (583742)
- 23 08/07/2006 (583743)
- 24 11/13/2006 (583749)
- 25 11/16/2006 (583745)
- 26 11/16/2006 (583746)
- 27 11/16/2006 (583751)
- 28 12/29/2006 (593297)
- 29 01/08/2007 (583753)

30 01/12/2007 (583747)  
31 01/12/2007 (583755)  
32 02/16/2007 (583735)  
33 04/17/2007 (583737)  
34 04/19/2007 (583739)  
35 05/14/2007 (583741)  
36 07/06/2007 (583744)  
37 07/06/2007 (608400)  
38 09/20/2007 (608401)  
39 09/20/2007 (608402)  
40 10/11/2007 (622922)  
41 12/18/2007 (635960)  
42 12/19/2007 (622923)  
43 12/19/2007 (622924)  
44 12/21/2007 (612010)  
45 02/01/2008 (674365)  
46 02/26/2008 (674363)  
47 03/20/2008 (674364)  
48 05/06/2008 (692711)  
49 05/28/2008 (692712)  
50 07/15/2008 (692713)  
51 08/21/2008 (713841)  
52 10/06/2008 (713842)  
53 10/06/2008 (713843)  
54 10/17/2008 (713844)  
55 12/01/2008 (729848)  
56 01/20/2009 (729849)  
57 01/20/2009 (729850)  
58 02/26/2009 (724492)  
59 03/31/2009 (739292)  
60 04/24/2009 (743185)  
61 04/27/2009 (742096)  
62 04/29/2009 (770640)  
63 04/29/2009 (770641)  
64 04/29/2009 (770642)  
65 07/24/2009 (761807)

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

1 Date: 11/30/2004 (385393) **CN600735831**  
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

2 Date: 01/31/2005 (385391) **CN600735831**  
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

3 Date: 12/29/2006 (593297) **CN600735831**  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 305, SubChapter F 305.125(17)  
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

4 Date: 08/31/2007 (608402) **CN600735831**  
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

5 Date: 09/30/2007 (622922) **CN600735831**  
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

6 Date: 12/18/2007 (635960) CN600735831  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 305, SubChapter F 305.125(17)  
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

7 Date: 03/31/2008 (692711) CN600735831  
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

8 Date: 04/30/2008 (692712) CN600735831  
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

9 Date: 02/27/2009 (724492)  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 305, SubChapter F 305.125(5)  
Operational Requirements; No. 1, Pg. 9 PERMIT  
Description: Failure by the permittee to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 319, SubChapter A 319.11(d)  
Monitoring Requirements; No. 2, Pg. 4 PERMIT  
Description: Failure to comply with procedures specified in 30 TAC 319.11 - 319.12.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 319, SubChapter A 319.11(a)  
Monitoring Requirements; No. 2, Pg. 4 PERMIT  
Description: Failure to comply with procedures specified in 30 TAC 319.11 - 319.12.

Self Report? NO Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Effluent Limitations; No. 1, Pg. 2 PERMIT

Description: Failure to discharge effluent in compliance with permitted effluent limitations.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Permit Conditions; No. 1(a), Pg. 7 PERMIT

Description: Failure to correctly report sludge disposal methods to the Commission.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 319, SubChapter A 319.7(c)  
Sludge Provisions; Section II F, Pg. 19 PERMIT

Description: Failure to maintain records of monitoring information related to sewage sludge use and disposal activities for a period of at least five years.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Permit Conditions; No. 1(a), Pg. 7 PERMIT

Description: Failure to correctly report the treatment units to the Commission.

10 Date: 04/23/2009 (743185) CN600735831  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 305, SubChapter F 305.125(5)  
Operational Requirements PERMIT  
Description: Failure to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastewater during electrical power failures.

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 BYNUM;  
RN101612943**

**§  
§  
§  
§  
§**

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2009-1406-MWD-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding City of Bynum ("Respondent") under the authority of TEX. WATER CODE Tex. Water Code chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent appear before the Commission and together stipulate that:

1. Respondent owns and operates a wastewater treatment facility located approximately 700 feet Northeast of the Intersection of State Highway 171 and Farm-to-Market Road 1242, Bynum, Hill County, Texas (the "Facility"). Respondent has discharged waste from the Facility into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of three thousand five hundred seventy-five dollars (\$3,575.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid three thousand five hundred seventy-five dollars (\$3,575.00) of the administrative penalty.
6. 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.
7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.

8. 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. 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**

1. During a record review investigation conducted on July 14, 2009, a TCEQ Waco Regional Office investigator documented that Respondent violated 30 TEX. ADMIN. CODE § 305.125(1) and (5) and Texas Discharge Elimination System ("TPDES") Permit No. WQ0011542001 Operational Requirements No. 4, by failing to install and subsequently maintain, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated .
2. Respondent received notice of the violation on or about July 27, 2009.

## **III. DENIALS**

1. Respondent generally denies each Allegation in Section II.

## **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and 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 considering or requiring corrective action or penalties for violations not addressed in this Agreed Order.
2. Respondent shall undertake the following technical requirements:
  - a. Within 90 days after the effective date of this Agreed Order, Respondent shall provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures, in accordance with TPDES Permit No. WQ0011542001.
  - b. Within 105 days after the effective date of this Agreed Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and shall include the following certification language:

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

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and

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

3. All relief not expressly granted in this Agreed Order is denied.
4. The provisions of this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. This Agreed Order, issued by the Commission, shall not be admissible against 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.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process that the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to 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

Johnnie Ann Purdie  
For the Executive Director

9/29/2010  
Date

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

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

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

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

D.M. West  
Signature

9/15/10  
Date

Dewey West  
Name (Printed or typed)  
Authorized Representative of  
City of Bynum

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.