

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-0975-MWD-E **TCEQ ID:** RN105068050 **CASE NO.:** 39870
RESPONDENT NAME: City of Fulshear and Fort Bend County Municipal Utility District No. 169

ORDER TYPE:		
<input checked="" type="checkbox"/> 166o AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Fort Bend County MUD 169 WWTP, located approximately 1.4 miles east and 0.2 mile north of the intersection of Farm-to-Market Road 359 and First Street in the City of Fulshear, Fort Bend County</p> <p>TYPE OF OPERATION: Wastewater treatment plant</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondents have expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 8, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Jennifer Graves, Enforcement Division, Enforcement Team 1, MC R-15, (956) 430-6023; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: The Honorable Thomas C. Kuykendall, Jr., Mayor, City of Fulshear, P.O. Box 279, Fulshear, Texas 77441 Mr. Arden J. Morley, President, Board of Directors, Fort Bend County MUD No. 169, P.O. Box 279, Fulshear, Texas 77441 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 13, 2010</p> <p>Date of NOV/NOE Relating to this Case: June 4, 2010 (NOE)</p> <p>Background Facts: This was a records review.</p> <p>WATER</p> <p>Failed to comply with the permitted effluent limitations for total suspended solids [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014745001, Interim I Effluent Limitations and Monitoring Requirements No. 1].</p>	<p>Total Assessed: \$2,850</p> <p>Total Deferred: \$570 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$2,280</p> <p>CN603140005 Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>CN600700066 Person Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>RN105068050 Site Compliance History Classification <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondents have implemented the following corrective measures at the Facility:</p> <p>a. By March 31, 2009, began reseeded the Facility with mixed liquor from another wastewater treatment plant; and</p> <p>b. By March 31, 2010, returned to compliance with the permitted effluent limits of TPDES Permit No. WQ0014745001.</p>

Additional ID No(s): WQ0014745001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	7-Jun-2010		
	PCW	6-Jul-2010	Screening	10-Jun-2010
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Fulshear and Fort Bend County Municipal Utility District No. 169
Reg. Ent. Ref. No.	RN105068050
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39870	No. of Violations	1
Docket No.	2010-0975-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 \$3,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 20.0% Enhancement Subtotals 2, 3, & 7 \$600

Notes: Enhancement due to four self-reported effluent violations.

Culpability No 0.0% Enhancement Subtotal 4 \$0

Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 \$750

Economic Benefit 0.0% Enhancement Subtotal 6 \$0

Total EB Amounts \$32
 Approx. Cost of Compliance \$500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$2,850

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$2,850

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$2,850

DEFERRAL 20.0% Reduction Adjustment -\$570

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

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY \$2,280

Screening Date 10-Jun-2010

Docket No. 2010-0975-MWD-E

PCW

Respondent City of Fulshear and Fort Bend County Municipal Utility D

Policy Revision 2 (September 2002)

Case ID No. 39870

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105068050

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)	4	20%
	Other written NOVs	0	0%
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) 20%

>> 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 four self-reported effluent violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 20%

Screening Date 10-Jun-2010

Docket No. 2010-0975-MWD-E

PCW

Respondent: City of Fulshear and Fort Bend County Municipal Utility District No.

Policy Revision 2 (September 2002)

Case ID No. 39870

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105088050

Media [Statute] Water Quality

Inf. 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. WQ0014745001; Interim Effluent Limitations and Monitoring Requirements No. 1

Violation Description

Failed to comply with the permitted effluent limitations, as documented during a record review on May 13, 2010, and shown in the attached violation table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual			X	10%
	Potential				

>> Programmatic Matrix

OR	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

Matrix Notes

Total suspended solids were considered to determine whether the discharged amounts of pollutants exceeded protective levels. 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 \$9,000

\$1,000

Violation Events

Number of Violation Events 3 Number of violation days 121

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$3,000

Three quarterly events are recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$750

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

Notes The Respondents achieved compliance by March 31, 2010.

Violation Subtotal \$2,250

Economic Benefit (EB) for this violation

Estimated EB Amount \$32

Statutory Limit Test

Violation Final Penalty Total \$2,850

This violation Final Assessed Penalty (adjusted for limits) \$2,850

Economic Benefit Worksheet

Respondent: City of Fulshear and Fort Bend County Municipal Utility District No. 169
Case ID No.: 39870
Reg. Ent. Reference No.: RN105068050
Media: Water Quality
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$500	30-Apr-2009	31-Mar-2010	0.92	\$2	\$31	\$32
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

Estimated cost to reseed the facility in order to keep the plant alive and operational (\$500). 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

	\$500
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TOTAL

	\$32
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EFFLUENT VIOLATION TABLE**City of Fulshear and Fort Bend County MUD No. 169****TPDES Permit No. WQ0014745001****Docket No. 2010-0975-MWD-E**

	TSS Daily Avg. Loading	TSS Daily Avg. Conc.	TSS Max. Single Grab
Months	Limit = 19 lbs/day	Limit = 15 mg/L	Limit = 60 mg/l
4/30/2009	48.00	37.50	c
9/30/2009	c	15.25	81
11/30/2009	34.89	55.58	123
12/31/2009	c	15.59	84

TSS = total suspended solids

avg. = average

conc. = concentration

max. = maximum

lbs/day = pounds per day

mg/L = milligrams per liter

c = compliant

Compliance History Report

Customer/Respondent/Owner-Operator: CN603140005 Fort Bend County Municipal Utility District 169 Classification: AVERAGE Rating: 2.25

Regulated Entity: RN105068050 FORT BEND COUNTY MUD 169 WWTP Classification: HIGH Site Rating: 0.00

ID Number(s): WASTEWATER PERMIT WQ0014745001
WASTEWATER EPA ID TX0129119

Location: APPROX 1.4 M E AND 0.2 M N OF THE INTX OF FM 359 AND 1ST ST IN THE CITY OF FULSHEAR, FORT BEND CO, TX

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: June 08, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 08, 2005 to June 08, 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? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If yes, who is the current owner/operator? OWN City of Fulshear
OWN Fort Bend County Municipal Utility District 169
4. If yes, who was/were the prior owner(s)/operator(s)? OWN Trendmaker Homes, Inc.
5. When did the change(s) in owner or operator occur? 08/19/2008
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 09/06/2007 (573812)
 - 2 05/29/2009 (773863)
 - 3 07/23/2009 (821980)
 - 4 08/17/2009 (821979)
 - 5 08/21/2009 (821981)
 - 6 09/24/2009 (821982)
 - 7 10/26/2009 (821983)
 - 8 11/23/2009 (821984)
 - 9 12/23/2009 (821985)
 - 10 01/29/2010 (821986)
 - 11 02/12/2010 (821978)
 - 12 06/04/2010 (802559)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 04/30/2009	(773863)	CN603140005
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: 09/30/2009 (821983) CN603140005
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: 11/30/2009 (821985) CN603140005
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: 12/31/2009 (821986) CN603140005
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

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

Compliance History Report

Customer/Respondent/Owner-Operator: CN600700066 City of Fulshear Classification: HIGH Rating: 0.08
Regulated Entity: RN105068050 FORT BEND COUNTY MUD 169 WWTP Classification: HIGH Site Rating: 0.00
ID Number(s): WASTEWATER PERMIT WQ0014745001
WASTEWATER EPA ID TX0129119
Location: APPROX 1.4 M E AND 0.2 M N OF THE
INTX OF FM 359 AND 1ST ST IN THE
CITY OF FULSHEAR IN FT BEND CO, TX
TCEQ Region: REGION 12 - HOUSTON
Date Compliance History Prepared: June 08, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 08, 2005 to June 08, 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? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If yes, who is the current owner/operator?
OWN City of Fulshear
OWN Fort Bend County Municipal Utility District 169
4. If yes, who was/were the prior owner(s)/operator(s)?
OWN Trendmaker Homes, Inc.
5. When did the change(s) in owner or operator occur?
08/19/2008
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. (CEEDS Inv. Track. No.)
- | | | |
|----|------------|----------|
| 1 | 09/06/2007 | (573812) |
| 2 | 05/29/2009 | (773863) |
| 3 | 07/23/2009 | (821980) |
| 4 | 08/17/2009 | (821979) |
| 5 | 08/21/2009 | (821981) |
| 6 | 09/24/2009 | (821982) |
| 7 | 10/26/2009 | (821983) |
| 8 | 11/23/2009 | (821984) |
| 9 | 12/23/2009 | (821985) |
| 10 | 01/29/2010 | (821986) |
| 11 | 02/12/2010 | (821978) |
| 12 | 06/04/2010 | (802559) |
- E. Written notices of violations (NOV). (CEEDS Inv. Track. No.)

Date: 04/30/2009 (773863) CN600700066
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: 09/30/2009 (821983) CN600700066
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: 11/30/2009 (821985) CN600700066
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: 12/31/2009 (821986) CN600700066
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF FULSHEAR AND FORT
BEND COUNTY MUNICIPAL
UTILITY DISTRICT NO. 169
RN105068050**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2010-0975-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 Fulshear and Fort Bend County Municipal Utility District No. 169 ("the Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. The Respondents own a wastewater treatment plant located approximately 1.4 miles east and 0.2 mile north of the intersection of Farm-to-Market Road 359 and First Street in Fulshear, Fort Bend County, Texas (the "Facility").
2. The Respondents have discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about June 9, 2010.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Two Thousand Eight Hundred Fifty Dollars (\$2,850) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid Two Thousand Two Hundred Eighty Dollars (\$2,280) of the administrative penalty and Five Hundred Seventy Dollars (\$570) is deferred contingent upon the Respondents' 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 Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondents to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondents 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 Respondents have implemented the following corrective measures at the Facility:
 - a. By March 31, 2009, began reseeded the Facility with mixed liquor from another wastewater treatment plant; and
 - b. By March 31, 2010, returned to compliance with the permitted effluent limits of Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014745001.
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 Respondents have 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 owners of the Facility, the Respondents are 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 TPDES Permit No. WQ0014745001, Interim I Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review on May 13, 2010, and shown in the following table:

EFFLUENT VIOLATION TABLE			
	TSS Daily Avg. Loading	TSS Daily Avg. Conc.	TSS Max. Single Grab
Months	Limit = 19 lbs/day	Limit = 15 mg/L	Limit = 60 mg/L
4/30/2009	48.00	37.50	c
9/30/2009	c	15.25	81
11/30/2009	34.89	55.58	123
12/31/2009	c	15.59	84
TSS = total suspended solids		lbs/day = pounds per day	
avg. = average		mg/L = milligrams per liter	
conc. = concentration		c = compliant	
max. = maximum			

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

- It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' 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 Fulshear and Fort Bend County Municipal Utility District No. 169, Docket No. 2010-0975-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 Respondents are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
- The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are 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.
- This Agreed Order, issued by the Commission, shall not be admissible against the Respondents 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.

5. 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.
6. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. ...
For the Executive Director

10/14/2010
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.

Thomas C. Kuykendall Jr.
Signature

9/8/10
Date

Thomas C. Kuykendall Jr.
Name (Printed or typed)
Authorized Representative of
City of Fulshear

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.

City of Fulshear and Fort Bend County Municipal Utility District No. 169
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Stroger

For the Executive Director

Date 10/14/2010

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.

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- 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.

Arden J. Morley

Signature

9/8/10

Date

Arden J. Morley

Name (Printed or typed)
Authorized Representative of
Fort Bend County Municipal Utility District No. 169

President, Board of Directors

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.