

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2009-0665-MWD-E TCEQ ID: RN102095627 CASE NO.: 37574**

**RESPONDENT NAME: CNL Income Splashtown, LLC and PARC Splashtown, LLC**

<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> PARC Splashtown, 21300 Interstate Highway 45, Spring, Harris County</p> <p><b>TYPE OF OPERATION:</b> Domestic wastewater system</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input 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 Respondents have expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on October 12, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Harvey Wilson, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-0321; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Ms. Amy Sinelli, Senior Vice President, CNL Income Splashtown, LLC, P.O. Box 839, Spring, Texas 77383                      Mr. Randal H. Drew, President, PARC Splashtown, LLC, 7892 Baymeadows Way, Jacksonville, Florida 32256  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

DOCKET NO.: 2009-0665-MWD-E

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> January 22, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> April 30, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a record review.</p> <p><b>WATER</b></p> <p>1) Failure to comply with the permit effluent limits for total nitrogen ammonia and total suspended solids [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011886001 Effluent Limitations and Monitoring Requirements No. 1].</p> <p>2) Failure to submit the annual sludge report at the interval specified in the permit. Specifically, the Respondent did not submit the annual sludge report for the monitoring period ending July 31, 2008, by September 1, 2008 [30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. WQ0011886001 Sludge Provisions].</p>	<p><b>Total Assessed:</b> \$1,850</p> <p><b>Total Deferred:</b> \$370  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$1,480</p> <p><b>Site Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input checked="" type="checkbox"/> High <input 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 Respondents implemented the following corrective measures at the Facility:</p> <p>a. Repaired the air diffusers by August 31, 2008 and reseeded the treatment plant by August 31, 2008; and</p> <p>b. Achieved compliance with permit effluent limits by September 1, 2008.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondents to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, submit the sludge report for the period ending July 31, 2008, and update the Facility's operational guidance manual and conduct employee training to ensure that operational activities and self-reporting requirements are properly accomplished, including the timely submittal of signed annual sludge reports; and</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision a.</p>

Additional ID No(s): WQ0011886001



Policy Revision 2 (September 2002)

# Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	4-May-2009	Screening	6-May-2009	EPA Due	
	PCW	7-May-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	CNL Income Splashtown, LLC and PARC Splashtown, LLC
Reg. Ent. Ref. No.	RN102095627
Facility/Site Region	12-Houston
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	37574	No. of Violations	2
Docket No.	2009-0665-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Harvey Wilson
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** *Subtotal 1* **\$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** 5.0% Enhancement *Subtotals 2, 3, & 7* **\$100**

Notes: An enhancement is recommended because the Respondents have three self-reported monthly effluent violations within the past five years and reduction is recommended for being classified as a High Performer.

**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* **\$250**

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

Total EB Amounts \$218  
Approx. Cost of Compliance \$7,600  
\*Capped at the Total EB \$ Amount

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

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

*Final Penalty Amount* **\$1,850**

**STATUTORY LIMIT ADJUSTMENT** *Final Assessed Penalty* **\$1,850**

**DEFERRAL** 20.0% Reduction *Adjustment* **-\$370**

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** **\$1,480**

**Screening Date** 6-May-2009

**Docket No.** 2009-0665-MWD-E

**PCW**

**Respondent** CNL Income Splashtown, LLC and PARC Splashtown, LI

Policy Revision 2 (September 2002)

**Case ID No.** 37574

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN102095627

**Media [Statute]** Water Quality

**Enf. Coordinator** Harvey Wilson

### 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)	3	15%
	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)** 15%

>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

High Performer

**Adjustment Percentage (Subtotal 7)** -10%

>> **Compliance History Summary**

**Compliance History Notes**

An enhancement is recommended because the Respondents have three self-reported monthly effluent violations within the past five years and reduction is recommended for being classified as a High Performer.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 5%

**Screening Date** 6-May-2009 **Docket No.** 2009-0865-MWD-E **PCW**  
**Respondent** CNL Income Splashtown, LLC and PARC Splashtown, LLC *Policy Revision 2 (September 2002)*  
**Case ID No.** 37574 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN102095627  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Harvey Wilson  
**Violation Number** 1  
**Rule Cite(s)** Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 306.125(1), and Texas Pollutant Discharge Elimination System Permit No. WQ0011866001 Effluent Limitations and Monitoring Requirements No. 1  
**Violation Description** Failed to comply with the permit effluent limits as depicted in the attached 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

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. Total suspended solids 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** \$9,000

\$1,000

**Violation Events**

Number of Violation Events: 1 Number of violation days: 62

mark only one with an x

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

**Violation Base Penalty** \$1,000

One quarterly event is recommended for July and August 2008.

**Good Faith Efforts to Comply** 25.0% Reduction: \$250

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

Notes: The Respondents returned to compliance by September 1, 2008.

**Violation Subtotal** \$750

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

Estimated EB Amount \$193 Violation Final Penalty Total \$800

**This violation Final Assessed Penalty (adjusted for limits)** \$800

### Economic Benefit Worksheet

**Respondent:** CNL Income Splashtown, LLC and PARC Splashtown, LLC  
**Case ID No.:** 37574  
**Reg. Ent. Reference No.:** RN102095627  
**Media:** Water Quality  
**Violation No.:** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

**Delayed Costs**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$5,500	1-Jul-2008	1-Sep-2008	0.17	\$3	\$62	\$65
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$1,500	1-Jul-2008	15-Mar-2010	1.70	\$128	n/a	\$128
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost of updating the operations guidance manual, conducting training, repairing the air diffusers and re-seeding the facility. Date Required is the date the violation was documented. Final date is the date of compliance and the estimated date of compliance.

**Avoided Costs**

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$7,000

**TOTAL:**

\$193

<b>Screening Date</b>	6-May-2009	<b>Docket No.</b>	2009-0665-MWD-E	<b>PCW</b>
<b>Respondent</b>	CNL Income Splashtown, LLC and PARC Splashtown, LLC			Policy Revision 2 (September 2002)
<b>Case ID No.</b>	37574			PCW Revision October 30, 2008
<b>Reg. Ent. Reference No.</b>	RN102095627			
<b>Media [Statute]</b>	Water Quality			
<b>Enf. Coordinator</b>	Harvey Wilson			
<b>Violation Number</b>	2			

<b>Rule Cite(s)</b>	30 Tex. Adm'n. Code § 305.125(17) and Texas Pollution Discharge Elimination System Permit No. WQ0011886001 Sludge Provisions
<b>Violation Description</b>	Failed to submit the annual sludge report at the interval specified in the permit. Specifically, the Respondents did not submit the annual sludge report for the monitoring period ending July 31, 2008, by September 1, 2008.
<b>Base Penalty</b>	\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual			
	Potential			0%

>> Programmatic Matrix

	Falsification			Percent
	Major	Moderate	Minor	
		X		10%

**Matrix Notes**  
100% of the rule requirement was not met.

**Adjustment** \$9,000

**\$1,000**

Violation Events

Number of Violation Events	1	Number of violation days	247	<b>Violation Base Penalty</b>	\$1,000
mark only one with an x	daily				
	weekly				
	monthly				
	quarterly				
	semiannual				
	annual				
	single event		X		

One single event is recommended.

Good Faith Efforts to Comply

	0.0% Reduction	\$0
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X (mark with x)	
<b>Notes</b>	The Respondents do not meet the good faith criteria for this violation.	

**Violation Subtotal** \$1,000

Economic Benefit (EB) for this violation

<b>Estimated EB Amount</b>	\$25	<b>Statutory Limit Test</b>	
		<b>Violation Final Penalty Total</b>	\$1,050
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>	\$1,050

### Economic Benefit Worksheet

**Respondent** CNL Income Splashtown, LLC and PARC Splashtown, LLC  
**Case ID No.** 37574  
**Reg. Ent. Reference No.** RN102095627  
**Media** Water Quality  
**Violation No.** 2

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

**Delayed Costs**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$500	1-Sep-2008	1-Sep-2009	1.00	\$25	n/a	\$25
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost of training facility personnel so all reports are submitted timely and completely. Date Required is the date the violation was due. Final Date is the estimated date of compliance.

**Avoided Costs**

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	<b>TOTAL</b>	\$25	
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CNL Income Splashtown, LLC and PARC Splashtown, LLC  
Docket No. 2009-0665-MWD-E  
Permit No. WQ0011886001

	Total Nitrogen Ammonia, Daily Average, 3 mg/L maximum	Total Suspended Solids, Daily Average, 15 mg/L maximum
July 2008	6.12	C
August 2008	4.43	15.3
mg/L =milligrams per Liter C= compliant		



# Compliance History Report

Customer/Respondent/Owner-Operator:	CN603379710	CNL Income Splashtown, LLC	Classification: HIGH	Rating: 0.05
Regulated Entity:	RN102095627	PARC SPLASHTOWN	Classification: HIGH	Site Rating: 0.05
ID Number(s):	WASTEWATER	PERMIT		WQ0011886001
	WASTEWATER	PERMIT		TPDES0073105
	WASTEWATER	PERMIT		TX0073105
	WASTEWATER LICENSING	LICENSE		WQ0011886001
Location:	21300 I H 45, SPRING, TX, 77373			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	May 22, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 06, 2004 to May 06, 2009			

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

Name: Harvey Wilson Phone: 239 - 0321

## 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? Yes
3. If Yes, who is the current owner/operator?
 

OWN	CNL Income Splashtown, LLC
OPR	PARC Splashtown, LLC
4. If Yes, who was/were the prior owner(s)/operator(s) ? Six Flags Splashtown LP
5. When did the change(s) in owner or operator occur? 06/30/2008
6. Rating Date: 9/1/2008 Repeat Violator: NO

### Components (Multimedia) for the Site :

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

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	05/20/2004	(359242)
2	06/21/2004	(312901)
3	07/20/2004	(359243)
4	09/01/2004	(359244)
5	09/20/2004	(359245)
6	10/22/2004	(359246)
7	11/22/2004	(359247)
8	12/20/2004	(385859)
9	01/20/2005	(385860)
10	02/21/2005	(385857)
11	03/21/2005	(385858)

12	04/20/2005	(423786)
13	05/19/2005	(423787)
14	06/23/2005	(381326)
15	06/23/2005	(423788)
16	07/20/2005	(444593)
17	09/01/2005	(444594)
18	09/20/2005	(444595)
19	10/19/2005	(475308)
20	11/17/2005	(475309)
21	12/20/2005	(475310)
22	01/20/2006	(475311)
23	03/20/2006	(475306)
24	03/20/2006	(475307)
25	04/20/2006	(502811)
26	05/24/2006	(502812)
27	06/20/2006	(502813)
28	07/26/2006	(525148)
29	08/22/2006	(525149)
30	09/20/2006	(525150)
31	10/23/2006	(584549)
32	11/27/2006	(584550)
33	12/18/2006	(584551)
34	02/01/2007	(584552)
35	02/22/2007	(584544)
36	03/23/2007	(584545)
37	04/20/2007	(584546)
38	05/18/2007	(584547)
39	06/18/2007	(584548)
40	08/23/2007	(604286)
41	08/23/2007	(604287)
42	09/18/2007	(604288)
43	10/17/2007	(623277)
44	12/06/2007	(623278)
45	12/19/2007	(623279)
46	02/04/2008	(674634)
47	02/25/2008	(674632)
48	03/20/2008	(674633)
49	04/11/2008	(692960)
50	05/19/2008	(692961)
51	07/16/2008	(692962)
52	07/21/2008	(714153)
53	09/03/2008	(714154)
54	10/02/2008	(730167)
55	10/24/2008	(730168)
56	01/07/2009	(730169)
57	01/07/2009	(730170)
58	04/30/2009	(724650)

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

Date:	09/30/2004 (359246)	CN603379710
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:	07/31/2008 (714154)	CN603379710
Self Report?	YES	Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)	

30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to meet the limit for one or more permit parameter

Date: 08/31/2008 (730167) CN603379710

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:	CN603345059    PARC Splashtown, LLC	Classification: HIGH	Rating: 0.05
Regulated Entity:	RN102095627    PARC SPLASHTOWN	Classification: HIGH	Site Rating: 0.05
ID Number(s):	WASTEWATER WASTEWATER WASTEWATER WASTEWATER LICENSING	PERMIT PERMIT PERMIT LICENSE	WQ0011886001 TPDES0073105 TX0073105 WQ0011886001
Location:	21300 I H 45, SPRING, TX, 77373		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	May 06, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	May 06, 2003 to May 06, 2008		

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

Name: Harvey Wilson Phone: 239 - 0321

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Y
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? Owner: CNL Income Splashtown, LLC  
Operator: PARC Splashtown, LLC
4. If Yes, who was/were the prior owner(s)/operator(s) ? Six Flags Splashtown, LLC
5. When did the change(s) in owner or operator occur? 6/30/2008
6. Rating Date: 9/1/2008 Repeat Violator: NO

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
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	05/20/2003	(312899)
2	06/10/2003	(60564)
3	06/23/2003	(312900)
4	07/21/2003	(312902)
5	09/02/2003	(312903)
6	09/19/2003	(312904)
7	10/17/2003	(312905)
8	11/20/2003	(312906)
9	12/22/2003	(312907)
10	01/20/2004	(312908)
11	02/20/2004	(312897)
12	03/19/2004	(312898)
13	04/20/2004	(359241)

14	05/20/2004	(359242)
15	06/21/2004	(312901)
16	07/20/2004	(359243)
17	09/01/2004	(359244)
18	09/20/2004	(359245)
19	10/22/2004	(359246)
20	11/22/2004	(359247)
21	12/20/2004	(385859)
22	01/20/2005	(385860)
23	02/21/2005	(385857)
24	03/21/2005	(385858)
25	04/20/2005	(423786)
26	05/19/2005	(423787)
27	06/23/2005	(381326)
28	06/23/2005	(423788)
29	07/20/2005	(444593)
30	09/01/2005	(444594)
31	09/20/2005	(444595)
32	10/19/2005	(475308)
33	11/17/2005	(475309)
34	12/20/2005	(475310)
35	01/20/2006	(475311)
36	03/20/2006	(475306)
37	03/20/2006	(475307)
38	04/20/2006	(502811)
39	05/24/2006	(502812)
40	06/20/2006	(502813)
41	07/26/2006	(525148)
42	08/22/2006	(525149)
43	09/20/2006	(525150)
44	10/23/2006	(584549)
45	11/27/2006	(584550)
46	12/18/2006	(584551)
47	02/01/2007	(584552)
48	02/22/2007	(584544)
49	03/23/2007	(584545)
50	04/20/2007	(584546)
51	05/18/2007	(584547)
52	06/18/2007	(584548)
53	08/23/2007	(604286)
54	08/23/2007	(604287)
55	09/18/2007	(604288)
56	10/17/2007	(623277)
57	12/06/2007	(623278)
58	12/19/2007	(623279)
59	02/04/2008	(674634)
60	02/25/2008	(674632)
61	03/20/2008	(674633)
62	04/11/2008	(692960)

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

Date: 09/30/2004

CN603345059

Self Report?

YES

Clas Moderate

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

TWC Chapter 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 07/31/2008

Self Report? Yes

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
TWC Chapter 26.121(1)

Description: Failure to meet the limit for one or more permit parameter

Date: 08/31/2008

CN603345059

Self Report? Yes

Classification: Moderate

Citation: 30 TAC Chapter 305.125(17)

Description: Failure to submit sludge monitoring results

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



<b>IN THE MATTER OF AN</b>	<b>§</b>	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	<b>§</b>	
<b>CONCERNING</b>	<b>§</b>	
<b>CNL INCOME SPLASHTOWN, LLC</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>AND PARC SPLASHTOWN, LLC</b>	<b>§</b>	
<b>RN102095627</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

## **AGREED ORDER** **DOCKET NO. 2009-0665-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 CNL Income Splashtown, LLC and PARC Splashtown, LLC ("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 CNL Income Splashtown, LLC owns and PARC Splashtown, LLC operates a domestic wastewater treatment system at 21300 Interstate Highway 45 in Spring, Harris County, Texas (the "Facility").
2. The Respondents have caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
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 May 5, 2009.
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 One Thousand Eight Hundred Fifty Dollars (\$1,850) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid One Thousand Four Hundred Eighty Dollars (\$1,480) of the administrative penalty and Three Hundred Seventy Dollars (\$370) 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 implemented the following corrective measures at the Facility:
  - a. Repaired the air diffusers by August 31, 2008 and reseeded the treatment plant by August 31, 2008; and
  - b. Achieved compliance with permit effluent limits by September 1, 2008.
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 owner and operator of the Facility, the Respondents are alleged to have:

1. Failed to comply with the permit effluent limits, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011886001 Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review on January 22, 2009 and depicted in the table below:

Effluent Table

	Total Nitrogen Ammonia, Daily Average, 3 mg/L maximum	Total Suspended Solids, Daily Average, 15 mg/L maximum
July 2008	6.12	C
August 2008	4.43	15.3
mg/L =milligrams per Liter		C = compliant

2. Failed to submit the annual sludge report at the interval specified in the permit, in violation of 30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. WQ0011886001 Sludge Provisions. Specifically, the Respondent did not submit the annual sludge report for the monitoring period ending July 31, 2008, by September 1, 2008, as documented during a record review conducted on January 22, 2009.

### III. DENIALS

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

### IV. ORDERING PROVISIONS

1. 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 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: CNL Income Splashtown, LLC and PARC Splashtown, LLC, Docket No. 2009-0665-MWD-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. 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.
3. It is further ordered that the Respondents shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, submit the sludge report for the period ending July 31, 2008, and update the Facility's operational guidance manual and conduct employee training to ensure that operational activities and self-reporting requirements are properly accomplished, including the timely submittal of signed annual sludge reports, in accordance with TPDES Permit No. WQ0011886001;
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 3.a. as described below. This certification

shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

2. 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.
3. If the Respondents fail 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 Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
4. 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. 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.

6. 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.
  
7. 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.

CNL Income Splashtown, LLC and PARC Splashtown, LLC  
DOCKET NO. 2009-0665-MWD-E  
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**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John Sallies  
For the Executive Director

1/19/2010  
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.

Randal H. Drew  
Signature

12/22/2009  
Date

RANDAL H. DREW  
Name (Printed or typed)  
Authorized Representative of PARC Splashtown, LLC

President  
Title

[Signature]  
Signature

12/17/09  
Date

AMY SINELLI  
Name (Printed or typed)  
Authorized Representative of CNL Income Splashtown, LLC

SENIOR VP  
Title