

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2009-1193-MWD-E **TCEQ ID:** RN104265848 **CASE NO.:** 38064

**RESPONDENT NAME:** City of Hawk Cove

<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> City of Hawk Cove WWTP, located at 9543 Morris Drive, 3,600 feet southeast of the intersection of County Road 3613 and County Road 3608, Hunt County</p> <p><b>TYPE OF OPERATION:</b> Wastewater treatment plant</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on January 4, 2010. 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. Steve Villatoro, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4930; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> The Honorable Billy W. Cosby, Mayor, City of Hawk Cove, 1585 Maria Street, Hawk Cove, Texas 75474  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> June 23, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> June 23, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a record review.</p> <p><b>WATER</b></p> <p>Failure to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures [30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System Permit No. WQ0014522001, Operational Requirements No. 4].</p>	<p><b>Total Assessed:</b> \$3,575</p> <p><b>Total Deferred:</b> \$715  <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 (Due) to General Revenue:</b> \$160 (remaining \$2,700 due in 27 monthly payments of \$100 each)</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>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes the Respondent has implemented the following corrective actions at the Facility:</p> <p>a. By October 1, 2009, the Respondent signed a contract with a contractor to provide generators when needed; and</p> <p>b. By October 23, 2009, the Respondent purchased a generator for the Facility.</p>

Additional ID No(s): WQ0014522001



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	<b>Assigned</b>	7-Jul-2009	<b>Screening</b>	14-Jul-2009	<b>EPA Due</b>	
	<b>PCW</b>	20-Jul-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	City of Hawk Cove
<b>Reg. Ent. Ref. No.</b>	RN104265848
<b>Facility/Site Region</b>	4-Dallas/Fort Worth
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	38064	<b>No. of Violations</b>	1
<b>Docket No.</b>	2009-1193-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>	Steve Villatoro
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** *Subtotal 1* **\$2,500**

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

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

**Compliance History** 43.0% Enhancement *Subtotals 2, 3, & 7* **\$1,075**

**Notes:** The penalty is enhanced due to nine self-reported monthly effluent violations, one NOV with same/similar violations to those cited in this action, and one agreed order with denial of liability.

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

**Notes:** The Respondent does not meet the culpability criteria.

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

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

Total EB Amounts \$1,159  
Approx. Cost of Compliance \$15,000  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** *Final Subtotal* **\$3,575**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes:**

*Final Penalty Amount* **\$3,575**

**STATUTORY LIMIT ADJUSTMENT** *Final Assessed Penalty* **\$3,575**

**DEFERRAL** 20.0% Reduction *Adjustment* **-\$715**

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** **\$2,860**

Screening Date 14-Jul-2009

Docket No. 2009-1193-MWD-E

PCW

Respondent City of Hawk Cove

Policy Revision 2 (September 2002)

Case ID No. 38064

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104265848

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

## Compliance History Worksheet

## &gt;&gt; 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)	1	5%
	Other written NOVs	9	18%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (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%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 43%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance History Notes

The penalty is enhanced due to nine self-reported monthly effluent violations, one NOV with same/similar violations to those cited in this action, and one agreed order with denial of liability.

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

**Screening Date:** 14-Jul-2009 **Docket No.:** 2009-1193-MWD-E **PCW**  
**Respondent:** City of Hawk Cove *Policy Revision 2 (September 2002)*  
**Case ID No.:** 38064 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.:** RN104265848  
**Media [Statute]:** Water Quality  
**Enf. Coordinator:** Steve Villatoro

**Violation Number:** 1  
**Rule Cite(s):** 30 Tex. Admin. Code § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014522001, Operational Requirements No. 4  
**Violation Description:** Failed to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures, as documented during a record review conducted on June 23, 2009.  
**Base Penalty:** \$10,000

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

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

**Percent:** 25%

**>> Programmatic Matrix**  

Falsification	Harm		
	Major	Moderate	Minor

**Percent:** 0%

**Matrix Notes:** Human health or the environment will or could be exposed to significant amounts of pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.  
**Adjustment:** \$7,500  
**Total:** \$2,500

**Violation Events**  
 Number of Violation Events: 1 Number of violation days: 21  

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

*mark only one with an x*  
**Violation Base Penalty:** \$2,500  
 One monthly event is recommended from the date of the record review (June 23, 2009) to the screening date (July 14, 2009).

**Good Faith Efforts to Comply:** 0.0% Reduction **\$0**  
 Before NOV NCV to EDPRP/Settlement Offer  

Extraordinary	
Ordinary	
N/A	X (mark with x)

**Notes:** The Respondent does not meet the good faith criteria for this violation.  
**Violation Subtotal:** \$2,500

**Economic Benefit (EB) for this violation:** Estimated EB Amount: \$1,159  
**Statutory Limit Test:** Violation Final Penalty Total: \$3,575  
**This violation Final Assessed Penalty (adjusted for limits):** \$3,575

### Economic Benefit Worksheet

**Respondent** City of Hawk Cove  
**Case ID No.** 38064  
**Reg. Ent. Reference No.** RN104265848  
**Media** Water Quality  
**Violation No.** 1

<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**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$15,000	23-Mar-2009	30-Apr-2010	1.10	\$55	\$1,104	\$1,159
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 costs to ensure the availability of adequate back up power to prevent an unauthorized discharge in the event of main power loss. Date Required is the date the violation was initially documented and Final Date is the expected 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	\$15,000	<b>TOTAL</b>	\$1,159
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# Compliance History Report

Customer/Respondent/Owner-Operator:	CN602626699	City of Hawk Cove	Classification: AVERAGE	Rating: 0.75
Regulated Entity:	RN104265848	CITY OF HAWK COVE WWTP	Classification: AVERAGE	Site Rating: 0.75
ID Number(s):	WASTEWATER	PERMIT		WQ0014522001
	WASTEWATER	EPA ID		TX0126691
	WASTEWATER	PERMIT		TX0126691
Location:	9543 Morris Drive, 3600 FT SE OF THE INTERSECTION OF CR 3613 AND CR 3608, Hunt County, Texas			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	July 28, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	July 14, 2004 to July 14, 2009			

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

Name: Steve Villatoro Phone: 512-239-4930

## 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: 9/1/2008 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.
  - Effective Date: 05/03/2009                      ADMINORDER 2008-1821-MWD-E
  - Classification: Moderate
  - Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)
  - Rgmt Prov: Effluent Limits PERMIT
  - Description: Failure to comply with permit effluent limits.
  
- 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	12/06/2007	(610556)
2	03/20/2008	(718506)
3	04/22/2008	(696797)
4	04/22/2008	(718507)
5	05/19/2008	(696796)
6	06/20/2008	(718508)
7	07/23/2008	(718509)
8	08/21/2008	(718510)
9	09/22/2008	(733739)
10	09/30/2008	(733738)
11	11/07/2008	(706046)
12	12/22/2008	(733740)
13	01/22/2009	(756885)
14	02/24/2009	(756884)

15 03/22/2009 (739173)  
16 06/29/2009 (759600)

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

Date: 02/29/2008 (718506) CN602626699  
Self YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter  
Date: 03/31/2008 (718507) CN602626699  
Self YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter  
Date: 04/30/2008 (696796) CN602626699  
Self YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter  
Date: 05/31/2008 (718508) CN602626699  
Self YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter  
Date: 06/30/2008 (718509) CN602626699  
Self YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter  
Date: 07/31/2008 (718510) CN602626699  
Self 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: 09/01/2008 (733738) CN602626699  
Self YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter  
Date: 10/31/2008 (733739) CN602626699  
Self 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: 11/30/2008 (733740) CN602626699  
Self YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter  
Date: 03/23/2009 (739173) CN602626699  
Self NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 305, SubChapter F 305.125(5)  
Description: Failure by the City of Hawk Cove to maintain adequate safeguards to prevent discharge of untreated or inadequately treated wastes during electrical power failure.

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 HAWK COVE  
RN104265848

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2009-1193-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 City of Hawk Cove ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a wastewater treatment plant located at 9543 Morris Drive, 3600 feet southeast of the intersection of County Road 3613 and County Road 3608 in Hunt County, Texas (the "Facility").
2. The City has 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 City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about June 28, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Three Thousand Five Hundred Seventy-Five Dollars (\$3,575) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The City has paid One Hundred Sixty Dollars (\$160) of the administrative penalty and Seven Hundred Fifteen Dollars (\$715) is deferred contingent upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty.

The remaining amount of Two Thousand Seven Hundred Dollars (\$2,700) of the administrative penalty shall be payable in twenty-seven monthly payments of One Hundred Dollars (\$100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the City fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the City to meet the payment schedule of this Agreed Order constitutes the failure by the City to timely and satisfactorily comply with all the terms of this Agreed Order.

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 City 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 the City has implemented the following corrective actions at the Facility:
  - a. By October 1, 2009, the City signed a contract with a contractor to provide generators when needed; and
  - b. By October 23, 2009, the City purchased a generator for the Facility.
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 City has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the City is alleged to have failed to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014522001, Operational Requirements No. 4, as documented during a record review conducted on June 23, 2009.

## III. DENIALS

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

## IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Hawk Cove, Docket No. 2009-1193-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 provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes 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 City shall be made in writing to the Executive Director. Extensions are not effective until the City receives 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 City 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 City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

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

12/21/2009  
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.

  
\_\_\_\_\_  
Signature

11/3/09  
Date

Billy W. Cosby  
Name (Printed or typed)  
Authorized Representative of  
City of Hawk Cove

Mayer  
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 I of this Agreed Order.

