

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2009-1267-MWD-E **TCEQ ID:** RN101917540 **CASE NO.:** 38111

**RESPONDENT NAME:** City of Buffalo

<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 Buffalo, 613 John Bullock Boulevard, adjacent to and east of Marion Boulevard, approximately 0.75 mile north-northeast of the intersection of United States Highways 75 and 79, Buffalo, Leon County</p> <p><b>TYPE OF OPERATION:</b> Wastewater treatment facility</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 February 22, 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> Ms. Cheryl Thompson, Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5886; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> The Honorable Royce Dawkins, Mayor, City of Buffalo, P.O. Box 219, Buffalo, Texas 75831  <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> July 9, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> July 22, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a record review.</p> <p><b>WATER</b></p> <p>Failure to provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastewater in the event of an electrical power failure by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater [30 TEX. ADMIN. CODE § 305.125(1) and (5) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010022001, Operational Requirements No. 4].</p>	<p><b>Total Assessed:</b> \$3,425</p> <p><b>Total Deferred:</b> \$685  <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> \$2,740</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 that the Respondent applied for funding with the Office of Rural Community Affairs Disaster Recovery Program on June 25, 2009.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to, within 90 days after the effective date of this Agreed Order, provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures, including detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.</p>

Additional ID No(s): WQ0010022001

**Penalty Calculation Worksheet (PCW)**  
 Policy Revision 2 (September 2002) PCW Revision October 30, 2008

<b>TCFQ</b>	<b>DATES</b>	<b>Assigned</b>	1-Aug-2009	<b>PCW</b>	10-Aug-2009	<b>Screening</b>	9-Aug-2009	<b>EPA Due</b>	
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<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	City of Buffalo
<b>Reg. Ent. Ref. No.</b>	RN101917540
<b>Facility/Site Region</b>	9-Waco
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	38111	<b>No. of Violations</b>	1
<b>Docket No.</b>	2009-1267-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>	Cheryl Thompson
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000
		<b>EC's Team</b>	Enforcement Team 3

<b>Penalty Calculation Section</b>	
<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b> \$2,500
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>	
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>	
<b>Compliance History</b>	37.0% Enhancement <b>Subtotals 2, 3, &amp; 7</b> \$925
<b>Notes</b>	The Respondent self-reported 14 monthly effluent-violations, received two NOV's for non-similar violations and one NOV for the same violation.
<b>Culpability</b>	No 0.0% Enhancement <b>Subtotal 4</b> \$0
<b>Notes</b>	The Respondent does not meet the culpability criteria.
<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b> \$0
<b>Economic Benefit</b>	0.0% Enhancement* <b>Subtotal 6</b> \$0
<small>Total EB Amounts</small>	\$906
<small>Approx. Cost of Compliance</small>	\$15,000
	*Capped at the Total EB \$ Amount
<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b> \$3,425
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0% <b>Adjustment</b> \$0
<small>Reduces or enhances the Final Subtotal by the indicated percentage.</small>	
<b>Notes</b>	
	<b>Final Penalty Amount</b> \$3,425
<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b> \$3,425
<b>DEFERRAL</b>	20.0% Reduction <b>Adjustment</b> -\$685
<small>Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>	
<b>Notes</b>	Deferral offered for expedited settlement.
<b>PAYABLE PENALTY</b>	<b>\$2,740</b>

**Screening Date** 9-Aug-2009

**Docket No.** 2009-1267-MWD-E

**PCW**

**Respondent:** City of Buffalo

Policy Revision 2 (September 2002)

**Case ID No.** 38111

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN101917540

**Media [Statute]** Water Quality

**Enf. Coordinator** Cheryl Thompson

### 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)	1	5%
	Other written NOVs	16	32%
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)** 37%

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

No

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

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

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

The Respondent self-reported 14 monthly effluent violations, received two NOVs for non-similar violatons and one NOV for the same violation.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 37%

<b>Screening Date</b> 9-Aug-2009	<b>Docket No.</b> 2009-1267-MWD-E	<b>PCW</b>	
<b>Respondent</b> City of Buffalo	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b> 38111	<i>PCW Revision October 30, 2008</i>		
<b>Reg. Ent. Reference No.</b> RN101917540			
<b>Media [Statute]</b> Water Quality			
<b>Enf. Coordinator</b> Cheryl Thompson			
<b>Violation Number</b> 1			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 305.125(1) and (5) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010022001, Operational Requirements No. 4		
<b>Violation Description</b>	Failed to provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastewater in the event of an electrical power failure by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.		
<b>Base Penalty</b>		\$10,000	
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
OR	<b>Harm</b>		
	Major	Moderate	Minor
	Actual	Potential	Percent
	x		25%
<b>&gt;&gt; Programmatic Matrix</b>			
	Major	Moderate	Minor
			Percent
			0%
<b>Matrix Notes</b>	Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors.		
<b>Adjustment</b>		\$7,500	
		\$2,500	
<b>Violation Events</b>			
<b>Number of Violation Events</b>	1	31	<b>Number of violation days</b>
<i>mark only one with an x</i>	daily		<b>Violation Base Penalty</b>
	weekly		
	monthly	x	
	quarterly		
	semiannual		
	annual		
	single event		
One monthly event is recommended from the period of July 9, 2009 (date of investigation) to August 9, 2009 (date of screening).			\$2,500
<b>Good Faith Efforts to Comply</b>		0.0% Reduction	\$0
	Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary			
Ordinary			
N/A	x	(mark with x)	
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.		
<b>Violation Subtotal</b>			\$2,500
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b>	\$906	<b>Violation Final Penalty Total</b>	\$3,425
		<b>This violation Final Assessed Penalty (adjusted for limits)</b>	\$3,425

### Economic Benefit Worksheet

**Respondent** City of Buffalo  
**Case ID No.** 38111  
**Reg. Ent. Reference No.** RN101917540  
**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	\$15,000	9-Jul-2009	20-May-2010	0.86	\$43	\$863	\$906
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**    Estimated cost for a standby generator or alternate power source. The Date Required is the investigation date and the final date is the expected 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    \$15,000    **TOTAL**    \$906

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN600337810	City of Buffalo	Classification: AVERAGE	Rating: 1.90
Regulated Entity:	RN101917540	CITY OF BUFFALO	Classification: AVERAGE	Site Rating: 0.79
ID Number(s):	WASTEWATER	PERMIT		WQ0010022001
	WASTEWATER	PERMIT		TPDES0053627
	WASTEWATER	PERMIT		TX0053627
	WASTEWATER LICENSING	LICENSE		WQ0010022001
Location:	613 John Bullock Boulevard, adjacent to and east of Marion Boulevard, approximately 3/4 mile north-northeast of the intersection of U.S. Highways 75 and 79 in Buffalo, Leon County			
TCEQ Region:	REGION 09 - WACO			
Date Compliance History Prepared:	August 09, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	August 09, 2004 to August 09, 2009			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Cheryl Thompson		Phone:	(817) 588-5888

## 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.

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	08/23/2004	(358652)
2	09/20/2004	(358653)
3	10/21/2004	(358654)
4	11/22/2004	(358655)
5	12/23/2004	(384403)
6	01/24/2005	(384404)
7	02/21/2005	(384401)
8	03/21/2005	(384402)
9	04/22/2005	(443276)
10	05/19/2005	(443277)
11	06/22/2005	(443278)
12	07/22/2005	(443279)
13	08/22/2005	(443280)
14	09/22/2005	(443281)
15	10/24/2005	(581625)
16	11/21/2005	(581627)
17	12/22/2005	(581629)
18	01/23/2006	(581631)
19	02/21/2006	(581612)
20	03/22/2006	(581614)
21	04/24/2006	(581616)
22	05/22/2006	(581618)
23	06/22/2006	(581620)
24	07/24/2006	(581622)
25	08/21/2006	(581623)
26	09/20/2006	(581624)
27	10/25/2006	(581626)
28	11/20/2006	(581628)
29	01/22/2007	(581632)
30	02/05/2007	(593274)

31	02/13/2007	(581630)
32	02/23/2007	(581613)
33	03/19/2007	(581615)
34	04/23/2007	(581617)
35	05/23/2007	(581619)
36	06/22/2007	(581621)
37	07/26/2007	(608196)
38	08/24/2007	(608197)
39	09/24/2007	(608198)
40	10/18/2007	(571072)
41	10/25/2007	(621759)
42	11/29/2007	(621780)
43	12/27/2007	(621761)
44	01/28/2008	(673735)
45	02/28/2008	(673734)
46	03/28/2008	(691966)
47	04/15/2008	(609008)
48	04/30/2008	(691967)
49	06/02/2008	(691968)
50	06/30/2008	(712992)
51	08/27/2008	(712994)
52	09/29/2008	(712995)
53	10/23/2008	(729186)
54	10/30/2008	(720840)
55	11/10/2008	(712993)
56	11/20/2008	(729186)
57	12/29/2008	(729187)
58	01/30/2009	(752358)
59	02/25/2009	(752356)
60	03/30/2009	(752357)
61	03/31/2009	(740470)
62	07/24/2009	(761803)

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

Date:	12/31/2004	(384404)	CN600337810	
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:	1/31/2005	-384401	CN600337810	
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:	5/31/2005	(443276)	CN600337810	
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:	12/31/2005	(581631)	CN600337810	
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:	06/30/2006	(581622)	CN600337810	
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:	12/31/2006	(581632)	CN600337810	
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:	02/05/2007	(593274)	CN600337810	
Self Report?	NO			Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) 30 TAC Chapter 305, SubChapter F 305.125(17)			
Description:	NON-RPT VIOL FOR MONIT PER OR PIPE			
Date:	04/30/2007	(581619)	CN600337810	
Self Report?	YES			Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)			
Description:	Failure to meet the limit for one or more permit parameter			
Date:	07/31/2007	(608197)	CN600337810	

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:	11/30/2007	(621761)	CN600337810	
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:	12/31/2007	(673735)	CN600337810	
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:	02/29/2008	(891966)	CN600337810	
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:	03/31/2008	(691967)	CN600337810	
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	(712995)	CN600337810	
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:	10/30/2008	(720840)	CN600337810	
Self Report?	NO		Classification:	Moderate
Citation:		30 TAC Chapter 305, SubChapter F 305.125(1) 30 TAC Chapter 305, SubChapter F 305.125(17)		
Description:		NON-RPT VIOS FOR MONIT PER OR PIPE		
Date:	11/30/2008	(729187)	CN600337810	
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:	03/27/2009	(740470)	CN600337810	
Self Report?	NO		Classification:	Minor
Citation:		30 TAC Chapter 305, SubChapter F 305.125(1) 30 TAC Chapter 305, SubChapter F 305.125(5)		
Description:		Operational Requirement; No. 4, Pg. 10 PERMIT Failure to install and subsequently maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.		

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 BUFFALO  
RN101917540**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2009-1267-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 Buffalo ("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 facility at 613 John Bullock Boulevard, adjacent to and east of Marion Boulevard, approximately 0.75 mile north-northeast of the intersection of United States Highways 75 and 79 in Buffalo, Leon 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 July 27, 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 Four Hundred Twenty-Five Dollars (\$3,425) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The City has paid Two Thousand Seven Hundred Forty Dollars (\$2,740) of the administrative penalty and Six Hundred Eighty-Five Dollars (\$685) 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.
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 that the City applied for funding with the Office of Rural Community Affairs Disaster Recovery Program on June 25, 2009.
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 provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastewater in the event of an electrical power failure by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (5) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010022001, Operational Requirements No. 4, as documented during a record review conducted on July 9, 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 Buffalo, Docket No. 2009-1267-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. It is further ordered that the City shall, within 90 days after the effective date of this Agreed Order, provide adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures, in accordance with TPDES Permit No. WQ0010022001, including detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The 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  
Waco Regional Office  
Texas Commission on Environmental Quality  
6801 Sanger Avenue, Suite 2500  
Waco, Texas 76710-7826

3. 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.
4. 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.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the 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.
6. 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.
7. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the 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

John Szalins  
For the Executive Director

1/29/2010  
Date

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

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

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

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

Royce Dawkins  
Signature

11-30-09  
Date

Royce Dawkins  
Name (Printed or typed)  
Authorized Representative of  
City of Buffalo

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.

