EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1302-MWD-E **TCEQ ID:** RN102079274 **CASE NO.:** 38144

RESPONDENT NAME: City of Mart

ORDER TYPE:		
_X_1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
_X_WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: City of Mart, located 1,500 feet east of Farm-to-Market Road 1860 and approximately 2,000 feet south of State Highway 164, on the west side of the City of Mart, Mart, McLennan County

TYPE OF OPERATION: Wastewater treatment facility

SMALL BUSINESS: ___ **Yes** _X_ **No**

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired on January 18, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Ms. Heather Brister, Enforcement Division, Enforcement Team 1, MC R-09, (254) 761-3034; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387

Respondent: The Honorable Norman Hoppying, Mayor, City of Mart, P.O. Box 360, Mart, Texas 76664

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

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint __ Routine __ Enforcement Follow-up _X_ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** July 14, 2009 **Date of NOV/NOE Relating to this Case:** July 22, 2009 (NOE) **Background Facts:** This was a record review. **WATER** 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. WQ0010645001, Operational Requirements No. 4].	**Total Assessed:** $3,725 **Total Deferred:** $745 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $2,980 **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the Respondent has allocated funds for the purchase and installation of a generator and is currently soliciting bids. **Ordering Provisions:** The Order will require the Respondent to: a. 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; and b. Within 105 days after the effective date of this Agreed Order; submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.

Additional ID No(s).: MWD/WQ0010645001/CO

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision October 30, 2008*

TCEQ

DATES					
Assigned	27-Jul-2009				
PCW	13-Aug-2009	Screening	30-Jul-2009	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	City of Mart		
Reg. Ent. Ref. No.	RN102079274		
Facility/Site Region	9-Waco	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	38144	No. of Violations	1
Docket No.	2009-1302-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Heather Brister
		EC's Team	Enforcement Team 1

Admin. Penalty $ Limit Minimum $0 Maximum $10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $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 49.0% Enhancement — *Subtotals 2, 3, & 7* $1,225

Notes: The penalty is enhanced due to 12 monthly self-reported effluent violations, one Notice of Violation ("NOV") for violations that are considered to be same or similar, and one Agreed Order with denial of liability language.

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 $992
Approx. Cost of Compliance $15,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $3,725

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $3,725

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $3,725

DEFERRAL 20.0% Reduction — *Adjustment* -$745

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $2,980

Screening Date 30-Jul-2009 **Docket No.** 2009-1302-MWD-E **PCW**

Respondent City of Mart *Policy Revision 2 (September 2002)*

Case ID No. 38144 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102079274

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

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	12	24%
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) 49%

>> **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 penalty is enhanced due to 12 monthly self-reported effluent violations, one Notice of Violation ("NOV") for violations that are considered to be same or similar, and one Agreed Order with denial of liability language.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 49%

Screening Date 30-Jul-2009 **Docket No.** 2009-1302-MWD-E **PCW**

Respondent City of Mart *Policy Revision 2 (September 2002)*

Case ID No. 38144 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102079274

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010645001, 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 July 14, 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	Major	Moderate	Minor

Percent 0%

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

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events 1 | 16 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $2,500

One monthly event is recommended from the date of the record review (July 14, 2009) to the date of screening (July 30, 2009).

Good Faith Efforts to Comply

0.0% Reduction $0

	Before NOV	NOV 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 $992

Statutory Limit Test

Violation Final Penalty Total $3,725

This violation Final Assessed Penalty (adjusted for limits) $3,725

Economic Benefit Worksheet

Respondent City of Mart
Case ID No. 38144
Reg. Ent. Reference No. RN102078274
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment	$15,000	20-Apr-2009	31-Mar-2010	0.95	$47	$945	$992
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 to maintain adequate safeguards at the Facility to prevent unauthorized discharges during electrical power failures. Date required is the date the violation was first 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

TOTAL: $992

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600344048	City of Mart	Classification: AVERAGE	Rating: 2.06
Regulated Entity:	RN102079274	CITY OF MART	Classification: AVERAGE	Site Rating: 1.12
ID Number(s):	WASTEWATER		PERMIT	WQ0010645001
	WASTEWATER		PERMIT	TPDES0026051
	WASTEWATER		PERMIT	TX0026051
	WASTEWATER LICENSING		LICENSE	WQ0010645001

Location: Located 1,500 feet east of Farm-to-Market Road 1860 and approximately 2,000 feet south of State Highway 164, on the west side of the City of Mart, McLennan County, Texas.

TCEQ Region: REGION 09 - WACO
Date Compliance History Prepared: August 13, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 30, 2004 to July 30, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Heather Brister Phone: 254-761-3034

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: **06/15/2009** ADMINORDER 2008-1907-MWD-E
Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
30 TAC Chapter 305, SubChapter F 305.125(1)
Rqmt Prov: Effluent Limits PERMIT
Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.

Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(17)
Rqmt Prov: Sludge Reporting Requirements PERMIT
Description: Failure to submit sludge monitoring results at the intervals specified in the permit as documented by a TCEQ record review.

Classification: Major
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(4)
Rqmt Prov: Permit Conditions, No. 2.d. PERMIT
Description: Failed to prevent the discharge of sludge into or adjacent to water in the state.

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	08/11/2004	(354646)
2	09/09/2004	(354647)
3	10/11/2004	(354648)
4	11/08/2004	(383287)
5	12/16/2004	(383288)
6	01/07/2005	(383289)

7	02/04/2005	(383286)
8	03/04/2005	(421109)
9	04/11/2005	(421110)
10	05/11/2005	(421111)
11	06/02/2005	(421112)
12	07/12/2005	(442090)
13	08/12/2005	(442091)
14	09/14/2005	(442092)
15	10/13/2005	(470955)
16	11/21/2005	(470956)
17	12/16/2005	(470957)
18	12/16/2005	(470959)
19	01/11/2006	(470958)
20	02/13/2006	(470953)
21	03/10/2006	(470954)
22	04/13/2006	(499839)
23	05/17/2006	(499840)
24	06/19/2006	(499841)
25	07/13/2006	(521927)
26	08/10/2006	(521928)
27	09/21/2006	(546581)
28	10/23/2006	(546582)
29	11/15/2006	(546583)
30	12/21/2006	(546584)
31	01/22/2007	(578768)
32	02/21/2007	(578762)
33	04/02/2007	(578763)
34	04/11/2007	(578764)
35	04/30/2007	(578765)
36	06/21/2007	(578766)
37	07/23/2007	(578767)
38	08/21/2007	(602565)
39	09/20/2007	(620813)
40	10/24/2007	(620814)
41	11/26/2007	(620815)
42	12/20/2007	(620816)
43	01/22/2008	(673023)
44	02/21/2008	(673021)
45	03/25/2008	(673022)
46	04/18/2008	(691092)
47	06/16/2008	(691093)
48	06/16/2008	(711976)
49	07/11/2008	(711977)
50	08/14/2008	(711978)
51	09/11/2008	(711979)
52	10/10/2008	(728377)
53	11/13/2008	(706200)
54	11/17/2008	(728378)
55	12/09/2008	(706848)
56	12/22/2008	(728379)
57	01/22/2009	(751469)
58	02/16/2009	(751468)
59	04/24/2009	(743129)
60	07/24/2009	(762153)

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

Date: **02/28/2006** (470954) CN600344048
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: **02/28/2007** (578763) CN600344048
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: **06/30/2007** (578767) CN600344048
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: **08/31/2007** (620813) CN600344048
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: **09/30/2007** (620814) CN600344048
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: **05/31/2008** (711976) CN600344048
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: **06/30/2008** (711977) CN600344048
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: **07/31/2008** (711978) CN600344048
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** (711979) CN600344048
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: **09/30/2008** (728377) CN600344048
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: **10/31/2008** (728378) CN600344048
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: **11/30/2008** (728379) CN600344048
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: **04/23/2009** (743129) CN600344048

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(5)
Operational Requirements: No.4, Pg. 10 PERMIT

Description: 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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
CITY OF MART	§	
RN102079274	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2009-1302-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 Mart ("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 located 1,500 feet east of Farm-to-Market Road 1860 and approximately 2,000 feet south of State Highway 164, on the west side of Mart, McLennan County, Texas (the "Facility").

2. The City has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.

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 Seven Hundred Twenty-Five Dollars ($3,725) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The City has paid Two Thousand Nine Hundred Eighty Dollars ($2,980) of the administrative penalty and Seven Hundred Forty-Five Dollars ($745) 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 has allocated funds for the purchase and installation of a generator and is currently soliciting bids.

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. WQ0010645001, Operational Requirements No. 4, as documented during a record review conducted on July 14, 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 Mart, Docket No. 2009-1302-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 undertake the following technical requirements:

   a. 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. WQ0010645001, Operational Requirements No. 4; and

   b. Within 105 days after the effective date of this Agreed Order; submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

      "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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

_____ 1/19/2010
For the Executive Director 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.

_____ 11/5/09
Signature Date

Norman Hoppe _____
Name (Printed or typed) Title
Authorized Representative of
City of Mart

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.