

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2009-1569-MWD-E **TCEQ ID:** RN101529022 **CASE NO.:** 38438

**RESPONDENT NAME:** Ellinger Sewer and Water Supply Corporation

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" 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> Ellinger Sewer &amp; Water Supply, located approximately 1,400 feet northeast of State Highway 71 and 1,900 feet northwest of Farm-to-Market Road 2503, Fayette 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 March 8, 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. Jordan Jones, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-2569; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Greg Hunger, Vice President, Ellinger Sewer and Water Supply Corporation, P.O. Box 130, Ellinger, Texas 78938  <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 checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input 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> September 8, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> September 23, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</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 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 Permit No. WQ0010945001, Operational Requirements No. 4].</p>	<p><b>Total Assessed:</b> \$4,500</p> <p><b>Total Deferred:</b> \$0  <input 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> \$4,500</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>Findings Orders Justification:</b> The Respondent has three repeated enforcement actions over the prior five year period for the same violation.</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has submitted an application for funding in January 2009 for an emergency generator and associated appurtenances through the State Fiscal Year 2010 Drinking Water State Revolving Fund Intended Use Plan.</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, 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 and submit written certification and include detailed supporting documentation including photographs, receipts, rental contracts, and/or other records to demonstrate compliance with this Ordering Provision.</p>

Additional ID No(s): TPDES Permit No. WQ0010945001



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	21-Sep-2009	Screening	24-Sep-2009	EPA Due	
	PCW	24-Sep-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Ellinger Sewer and Water Supply Corporation
Reg. Ent. Ref. No.	RN101529022
Facility/Site Region	11-Austin
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	38438	No. of Violations	1
Docket No.	2009-1569-MWD-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Jordan Jones
		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 \$2,500

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

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

**Compliance History** 80.0% Enhancement Subtotals 2, 3, & 7 \$2,000

Notes: An enhancement is recommended because the Respondent has 14 self reported months of effluent violations, one NOV for non-similar violation, two NOVs for the same violation, and two Agreed Orders with denial within the last five years.

**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 \$711  
 Approx. Cost of Compliance \$5,000  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal \$4,500

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** \$4,500

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty \$4,500

**DEFERRAL** 0.0% Reduction Adjustment \$0

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

Notes

No deferral is recommended for Findings Orders.

**PAYABLE PENALTY** \$4,500

Screening Date 24-Sep-2009

Docket No. 2009-1569-MWD-E

PCW

Respondent Ellinger Sewer and Water Supply Corporation

Policy Revision 2 (September 2002)

Case ID No. 38438

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101529022

Media [Statute] Water Quality

Enf. Coordinator Jordan Jones

### 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)	2	10%
	Other written NOVs	15	30%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	2	40%
	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) 80%

>> 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

An enhancement is recommended because the Respondent has 14 self reported months of effluent violations, one NOV for non-similar violation, two NOVs for the same violation, and two Agreed Orders with denial within the last five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 80%

Screening Date 24-Sep-2009

Docket No. 2009-1569-MWD-E

PGW

Respondent Ellinger Sewer and Water Supply Corporation

Policy Revision 2 (September 2002)

Case ID No. 38438

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN101529022

Media [Statute] Water Quality

Enf. Coordinator Jordan Jones

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and (5) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010945001, 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 by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment will or could be exposed to pollutants which would be exceeded levels that are protective of human health or environmental receptors.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 17

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 investigation (September 8, 2009) until the date of screening (September 24, 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

Statutory Limit Test

Estimated EB Amount \$711

Violation Final Penalty Total \$4,500

This violation Final Assessed Penalty (adjusted for limits) \$4,500

## Economic Benefit Worksheet

**Respondent:** Ellinger Sewer and Water Supply Corporation  
**Case ID No.:** 38438  
**Reg. Ent. Reference No.:** RN101529022  
**Media:** Water Quality  
**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

**Item Cost**    **Date Required**    **Final Date**    **Yrs**    **Interest Saved**    **One-time Costs**    **EB Amount**  
**Item Description**    No commas or \$

**Delayed Costs**

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	One-time Costs	EB Amount
Equipment	\$5,000	10-Sep-2008	21-Sep-2010	2.03	\$34	\$677	\$711
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

The estimated cost of providing an on-site generator to serve as a back-up electrical source. Date Required is the date the violation was first documented. Final Date is the estimated date of compliance.

**Avoided Costs**

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

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	One-time 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

\$5,000

TOTAL

\$711

# Compliance History Report Pending

Customer/Respondent/Owner-Operator:	CN600666721	Ellinger Sewer and Water Supply Corporation	Classification: AVERAGE	Rating: 3.80
Regulated Entity:	RN101529022	ELLINGER SEWER & WATER SUPPLY	Classification: AVERAGE	Site Rating: 4.59
ID Number(s):	WASTEWATER	PERMIT		WQ0010945001
	WASTEWATER	PERMIT		TPDES0066648
	WASTEWATER	PERMIT		TX0066648
	WASTEWATER	PERMIT		WQ0010945001
	WASTEWATER LICENSING	LICENSE		WQ0010945001
Location:	approximately 1,400 feet northeast of State Highway 71 and 1,900 feet northwest of Farm-to-Market Road 2503 in Fayette County, Texas.			
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	September 21, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 21, 2004 to September 21, 2009			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Jordan Jones	Phone:	512-239-2569	

## 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: 9/1/2009 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: 09/21/2006 ADMINORDER 2006-0255-MWD-E  
 Classification: Minor  
 Citation: 30 TAC Chapter 317.4(a)(5)  
 Description: Failure to provide auxiliary power facilities to prevent the discharge of untreated or inadequately treated waste in the event of a power failure.
- Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Rqmt Prov: Monitoring & Reporting Requirements 3.b. PERMIT  
 Operational Requirements No. 1 PERMIT  
 Description: Failure to retain records at the Facility or have them readily available for review by a TCEQ representative.
- 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 2.d. PERMIT  
 Description: Failure to prevent the discharge of sludge to the receiving stream.
- Classification: Moderate  
 Citation: 30 TAC Chapter 317.4(c)  
 30 TAC Chapter 319, SubChapter A 319.11(d)  
 30 TAC Chapter 319, SubChapter A 319.4  
 Rqmt Prov: Monitoring Requirement No. 1 PERMIT  
 Description: Failure to measure the daily average flow according to approved methods and required frequency.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: Effluent Limitations Nos. 1 and 6 PERMIT

Description: Failure to comply with permit effluent limits for biochemical oxygen demand, total suspended solids and dissolved oxygen.

Classification: Moderate

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

Rqmt Prov: Self-reporting Requirements PERMIT

Description: Failure to submit annual Discharge Monitoring Reports (DMRs) for sewage sludge data by September 1, 2004 for the time period of August 1, 2003 to July 31, 2004.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CEEDS Inv. Track. No.)

1	09/28/2004	(358246)
2	10/29/2004	(358247)
3	11/29/2004	(385246)
4	12/27/2004	(358248)
5	01/24/2005	(385247)
6	02/08/2005	(348497)
7	02/18/2005	(423277)
8	03/29/2005	(423278)
9	05/04/2005	(423279)
10	06/01/2005	(423280)
11	06/24/2005	(423281)
12	08/03/2005	(444115)
13	08/26/2005	(444116)
14	10/03/2005	(474464)
15	10/28/2005	(474465)
16	11/28/2005	(474466)
17	12/30/2005	(474467)
18	01/20/2006	(474468)
19	02/27/2006	(474462)
20	02/28/2006	(440351)
21	03/30/2006	(474463)
22	05/08/2006	(502297)
23	05/31/2006	(502298)
24	06/30/2006	(502299)
25	07/28/2006	(524619)
26	09/20/2006	(524620)
27	09/28/2006	(524621)
28	10/30/2006	(549577)
29	12/27/2006	(549578)
30	01/30/2007	(583460)
31	03/06/2007	(583457)
32	05/08/2007	(583458)
33	05/24/2007	(583459)
34	07/03/2007	(603938)
35	08/20/2007	(603939)
36	09/07/2007	(603940)
37	10/10/2007	(603941)
38	10/30/2007	(622755)
39	12/20/2007	(622756)
40	12/20/2007	(622757)

41	03/03/2008	(692599)
42	03/03/2008	(692602)
43	04/01/2008	(692600)
44	05/07/2008	(692601)
45	06/02/2008	(713729)
46	06/26/2008	(713730)
47	08/11/2008	(713731)
48	09/03/2008	(713732)
49	09/17/2008	(713733)
50	09/25/2008	(700728)
51	10/03/2008	(700733)
52	11/17/2008	(729736)
53	11/17/2008	(729737)
54	12/16/2008	(709855)
55	01/06/2009	(729738)
56	01/12/2009	(723283)
57	01/26/2009	(724812)
58	01/27/2009	(762975)
59	02/18/2009	(752972)
60	03/11/2009	(752973)
61	04/20/2009	(752974)
62	06/08/2009	(747098)
63	06/15/2009	(770562)
64	06/15/2009	(770563)
65	09/15/2009	(775409)

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

Date:	09/30/2004	(358247)	CN600666721	
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:	10/31/2004	(385246)	CN600666721	
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:	12/31/2004	(385247)	CN600666721	
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:	01/31/2005	(423277)	CN600666721	
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:	04/30/2005	(423280)	CN600666721	
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:	05/31/2005	(423281)	CN600666721	
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:	06/30/2005	(444115)	CN600666721	
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:	10/31/2005	(474466)	CN600666721	

Self Report?	YES	Classifica	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:	02/28/2008 (474463)	CN600666721	
Self Report?	YES	Classifica	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:	01/31/2007 (583457)	CN600666721	
Self Report?	YES	Classifica	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:	09/24/2008 (700728)	CN600666721	
Self Report?	NO	Classifica	Moderate
Citation:	30 TAC Chapter 317 317.4(a)(8)		
Description:	Failure to have an atmospheric vacuum breaker installed on the hose bib used to wash down plant.		
Self Report?	NO	Classifica	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) 30 TAC Chapter 305, SubChapter F 305.125(5)		
Description:	Failure to provide auxiliary power facilities or an acceptable alternative to auxiliary power in accordance with 30 TAC 305.125(4) and 305.125(5) and TPDES Permit No. WQ0010945001, page 10, Operational Requirement No. 4.		
Self Report?	NO	Classifica	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to maintain the chlorine residual at the permitted limit of at least 1.0 mg/L. The chlorine residual reading was 0.49 mg/L at 10:10 when the samples were taken for laboratory analysis.		
Date:	10/01/2008 (700733)	CN600666721	
Self Report?	NO	Classifica	Minor
Citation:	30 TAC Chapter 312, SubChapter G 312.142(e)		
Description:	Failure to submit a new sludge transporter registration application.		
Date:	11/30/2008 (729738)	CN600666721	
Self Report?	YES	Classifica	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:	12/12/2008 (709855)	CN600666721	
Self Report?	NO	Classifica	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) 30 TAC Chapter 305, SubChapter F 305.125(5)		
Description:	Failure to provide auxiliary power facilities or an acceptable alternative to auxiliary power in accordance with 30 TAC 305.125(1) and 305.125(5) and TPDES Permit No. WQ0010945001, page 10, Operational Requirement No. 4.		
Date:	01/31/2009 (752972)	CN600666721	
Self Report?	YES	Classifica	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:	02/28/2009 (752973)	CN600666721	
Self Report?	YES	Classifica	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:	05/31/2009 (770563)	CN600666721	
Self Report?	YES	Classifica	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
- H. Sites Outside of Texas  
N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
ELLINGER SEWER AND WATER  
SUPPLY CORPORATION  
RN101529022

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2009-1569-MWD-E

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Ellinger Sewer and Water Supply Corporation ("the Respondent") under the authority of TEX. Water Code chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that he has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

### I. FINDINGS OF FACT

1. The Respondent owns and operates a wastewater treatment plant located approximately 1,400 feet northeast of State Highway 71 and 1,900 feet northwest of Farm-to-Market Road 2503 in Fayette County, Texas (the "Facility").

2. The Respondent 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. During an investigation on September 8, 2009, TCEQ staff documented the Respondent did not provide means of alternative power sources to prevent discharges during power outages.
4. The Respondent received notice of the violations on September 28, 2009.
5. The Executive Director recognizes that the Respondent has submitted an application for funding in January 2009 for an emergency generator and associated appurtenances through the State Fiscal Year 2010 Drinking Water State Revolving Fund ("DWSRF") Intended Use Plan ("IUP").

## II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to 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, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (5) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010945001, Operational Requirements No. 4.
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Four Thousand Five Hundred Dollars (\$4,500) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Four Thousand Five Hundred Dollar (\$4,500) administrative penalty.

## III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Four Thousand Five Hundred Dollars (\$4,500) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve

the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Ellinger Sewer and Water Supply Corporation, Docket No. 2009-1569-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 Respondent shall, within 90 days after the effective date of this Agreed Order, 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 in accordance with TPDES Permit No. WQ0010945001 Operational Requirements No. 4 and submit written certification as described below, and include detailed supporting documentation including photographs, receipts, rental contracts, and/or other records to demonstrate compliance with this Ordering Provision. 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  
Austin Regional Office  
Texas Commission on Environmental Quality  
2800 S IH 35, Suite 100  
Austin, Texas 78704-5712

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent 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 Respondent 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 Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent 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.
9. 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.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

*John S. Miller*  
For the Executive Director

2/17/2010  
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Ellinger Sewer and Water Supply Corporation. I am authorized to agree to the attached Agreed Order on behalf of Ellinger Sewer and Water Supply Corporation, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Ellinger Sewer and Water Supply Corporation waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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.

*Greg Hunger*  
Signature

12-14-09  
Date

Greg Hunger  
Name (Printed or typed)  
Authorized Representative of  
Ellinger Sewer and Water Supply Corporation

Vice President  
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.

