

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-0103-MWD-E **TCEQ ID:** RN102179892 **CASE NO.:** 39028

RESPONDENT NAME: City of Cleveland

ORDER TYPE:		
<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	
CASE TYPE:		
<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>SITE WHERE VIOLATION(S) OCCURRED: New West Plant, located south of State Highway 105, approximately 0.5 mile west of the intersection of State Highway 105 and United States Highway 59, Liberty County</p> <p>TYPE OF OPERATION: Wastewater treatment facility</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 17, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Samuel Short, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-5363; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Philip Cook, City Manager, City of Cleveland, 907 East Houston Street, Cleveland, Texas 77327 Mr. Mike Ulbig, Public Works Director, City of Cleveland, 907 East Houston Street, Cleveland, Texas 77327 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: October 27, 2009</p> <p>Date of NOV/NOE Relating to this Case: January 15, 2010 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to comply with permit effluent limits for ammonia nitrogen [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010766001, Effluent Limitations and Monitoring Requirements No. 1].</p>	<p>Total Assessed: \$5,460</p> <p>Total Deferred: \$1,092 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$4,368</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to, within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010766001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.</p>

Additional ID No(s): WQ0010766001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned: 19-Jan-2010	Screening: 20-Jan-2010	EPA Due: <input type="text"/>
	PCW: 22-Jan-2010		

RESPONDENT/FACILITY INFORMATION

Respondent	City of Cleveland		
Reg. Ent. Ref. No.	RN102179892		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	39028	No. of Violations	1
Docket No.	2010-0103-MWD-E	Order Type	1860
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Samuel Short
		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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 82.0% Enhancement **Subtotals 2, 3, & 7**

Notes: Enhancement recommended for having 12 NOVs for self-reported effluent violations, one NOV for non-similar violations, and one Agreed Order with denial language within the last five years.

Culpability No

Notes: The City does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5

Economic Benefit 0.0% Enhancement* **Subtotal 6**

Total EB Amounts
 Approx. Cost of Compliance
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL

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

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

Screening Date 20-Jan-2010

Docket No. 2010-0103-MWD-E

PCW

Respondent City of Cleveland

Policy Revision 2 (September 2002)

Case ID No. 39028

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102179892

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

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)	12	60%
	Other written NOVs	1	2%
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%
<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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Enhancement recommended for having 12 NOVs for self-reported effluent violations, one NOV for non-similar violations, and one Agreed Order with denial language within the last five years.

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

Screening Date 20-Jan-2010

Docket No. 2010-0103-MWD-E

PCW

Respondent City of Cleveland

Policy Revision 2 (September 2002)

Case ID No. 39028

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102179892

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010786001, Effluent Limitations and Monitoring Requirements No. 1

Violation Description

Failed to comply with permit effluent limits, as documented during a record review conducted on October 27, 2009 and shown in the attached table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

A simplified model was used to evaluate ammonia nitrogen ("NH3-N") to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3

154 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$3,000

Three quarterly events are recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

	Before NOV	NOV to EDRP/Saltwater Offer
	Extraordinary	
Ordinary		
N/A	X	(mark with x)

Notes The City does not meet the good faith criteria for this violation.

Violation Subtotal \$3,000

Economic Benefit (EB) for this violation

Estimated EB Amount \$452

Statutory Limit Test

Violation Final Penalty Total \$5,460

This violation Final Assessed Penalty (adjusted for limits) \$5,460

Economic Benefit Worksheet

Respondent City of Cleveland
Case ID No. 39028
Reg. Ent. Reference No. RN102179892
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				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)	\$5,000	31-Dec-2008	22-Oct-2010	1.81	\$452	n/a	\$452

Notes for DELAYED costs

The estimated cost to evaluate the causes of the effluent violations and to implement necessary rehabilitation to the wastewater system. Date required is the first date of non-compliance. The 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

\$5,000

TOTAL

\$452

Effluent Limit Violation Table

table rev.

Respondent	City of Cleveland
ID Number(s)	TPDES Permit No. WQ0010766001; Case No. 39028
Docket Number	2010-0103-MWD-E
Enf. Coordinator	Samuel Short

Corresponds to Violation Number: 1

EFFLUENT PARAMETER

Permit Limit

<i>Month/Year</i>	Ammonia Nitrogen Daily Average Concentration	Ammonia Nitrogen Daily Average Loading	Ammonia Nitrogen Daily max.										
	3 mg/L	19 lb/dy	10 mg/L										
12/31/2008	3.62	c	c										
1/31/2009	3.47	c	c										
5/31/2009	4.88	19.8	c										
6/30/2009	3.13	c	c										
7/31/2009	13.6	50.1	26										

<u>Name</u>	<u>Abbreviation</u>
milligrams per liter	mg/L
total suspended solids	TSS
maximum	max.
pounds per day	lb/dy

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600588586	City of Cleveland	Classification: AVERAGE	Rating: 2.11
Regulated Entity:	RN102179892	NEW WEST PLANT	Classification: AVERAGE	Site Rating: 1.57
ID Number(s):	WASTEWATER	PERMIT		WQ0010768001
	WASTEWATER	PERMIT		TPDES0053473
	WASTEWATER	PERMIT		TX0053473
	WASTEWATER LICENSING	LICENSE		WQ0010768001
Location:	LOCATED SOUTH OF STATE HIGHWAY 105, APPROXIMATELY 0.5 MILE WEST OF THE INTERSECTION OF STATE HIGHWAY 105 AND U.S. HIGHWAY 59, LIBERTY COUNTY, TEXAS			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	January 20, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	January 20, 2005 to January 20, 2010			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	<u>Samuel Short</u>	Phone:	<u>(512) 239-5363</u>	

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: 11/09/2007 ADMINORDER 2007-0645-MWD-E
 - Classification: Moderate
 - Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
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: Minor
 - Citation: 30 TAC Chapter 305, SubChapter F 305.125(17)
 - Rqmt Prov: Self-reporting Requirements PERMIT
 - Description: Failure to submit monitoring results at the intervals specified in the permit as documented by a TCEQ record review.
- 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	01/24/2005	(384381)
2	03/02/2005	(422314)
3	03/22/2005	(384378)
4	05/03/2005	(422315)
5	06/01/2005	(422316)
6	07/19/2005	(443233)
7	07/19/2005	(443234)
8	08/23/2005	(443235)

9	09/19/2005	(443236)
10	10/21/2005	(472988)
11	11/02/2005	(431120)
12	11/15/2005	(472989)
13	12/20/2005	(472990)
14	01/12/2006	(451442)
15	01/23/2006	(472991)
16	02/24/2006	(472986)
17	03/17/2006	(472987)
18	04/17/2006	(501271)
19	05/15/2006	(501272)
20	06/20/2006	(501273)
21	07/18/2006	(523510)
22	08/14/2006	(523511)
23	10/06/2006	(548418)
24	10/16/2006	(548419)
25	11/15/2006	(548420)
26	01/10/2007	(581559)
27	01/18/2007	(581560)
28	02/15/2007	(581554)
29	03/19/2007	(581555)
30	04/12/2007	(554228)
31	04/18/2007	(581556)
32	05/23/2007	(581557)
33	06/16/2007	(581558)
34	07/17/2007	(808164)
35	08/20/2007	(808165)
36	09/13/2007	(808166)
37	10/11/2007	(621745)
38	11/16/2007	(621746)
39	11/29/2007	(598199)
40	12/13/2007	(611694)
41	12/17/2007	(621747)
42	01/24/2008	(673694)
43	02/15/2008	(673693)
44	03/17/2008	(691947)
45	04/17/2008	(691948)
46	05/19/2008	(691949)
47	06/18/2008	(712965)
48	07/14/2008	(712966)
49	08/18/2008	(712967)
50	09/25/2008	(712968)
51	10/17/2008	(729168)
52	11/18/2008	(729169)
53	12/16/2008	(729170)
54	01/20/2009	(752339)
55	02/17/2009	(752338)
56	03/17/2009	(769985)
57	04/17/2009	(769986)
58	05/19/2009	(769987)
59	01/15/2010	(780488)

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

Date:	02/28/2005	(384378)	CN600588586	
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:	08/31/2005	(443236)	CN600588586	
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:	09/30/2005 (472988)	CN600588586	
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:	11/01/2005 (431120)	CN600588586	
Self Report?	NO		Classification: Moderate
Citation:	10766-001 PERMIT 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to collect flow proportional composite samples.		
Self Report?	NO		Classification: Moderate
Citation:	10766-001 PERMIT 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to report effluent violations that deviate from the permit limits by greater than 40%.		
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5)		
Description:	Failure to properly operate and maintain the wastewater treatment plant.		
Self Report?	NO		Classification: Minor
Citation:	10766-001 PERMIT 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to report the annual amount of sludge produced.		
Date:	07/31/2006 (523511)	CN600588586	
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:	09/30/2006 (548419)	CN600588586	
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:	05/31/2008 (712965)	CN600588586	
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 (712967)	CN600588586	
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:	12/31/2008 (752339)	CN600588586	
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:	01/31/2009 (752338)	CN600588586	
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:	05/31/2009	CN600588586	
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:	06/30/2009	CN600588586	
Self Report?	YES		Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		

Description: 30 TAC Chapter 305, SubChapter F 305.125(1)
Failure to meet the limit for one or more permit parameter

Date: 07/31/2009

CN600588586

Self Report? YES

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)

30 TAC Chapter 305, SubChapter F 305.125(1)

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

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF CLEVELAND
RN102179892

§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2010-0103-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 the City of Cleveland ("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 south of State Highway 105, approximately 0.5 mile west of the intersection of State Highway 105 and United States Highway 59 in Liberty County, Texas (the "Facility").
2. The City has discharged municipal waste into or adjacent to 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 January 20, 2010.
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 Five Thousand Four Hundred Sixty Dollars (\$5,460) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The City has paid Four Thousand Three Hundred Sixty-Eight Dollars (\$4,368) of the administrative penalty and One Thousand Ninety-Two Dollars (\$1,092) 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 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.
10. 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.
11. 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 comply with permit effluent limits, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010766001, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on October 27, 2009 and as shown in the table below.

EFFLUENT PARAMETER

Permit Limit

<i>Month/Year</i>	Ammonia Nitrogen Daily Average Concentration	Ammonia Nitrogen Daily Average Loading	Ammonia Nitrogen Daily max.
	3 mg/L	19 lb/dy	10 mg/L
12/31/2008	3.62	c	c
1/31/2009	3.47	c	c
5/31/2009	4.88	19.8	c
6/30/2009	3.13	c	c
7/31/2009	13.6	50.1	26

Name	Abbreviation
milligrams per liter	mg/L
total suspended solids	TSS
maximum	max.
pounds per day	lb/dy

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 Cleveland, Docket No. 2010-0103-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, within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010766001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. 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
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

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



For the Executive Director

4/20/2010
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.



Signature

03-10-2010
Date

MIKE UEBIS

Name (Printed or typed)
Authorized Representative of
City of Cleveland

PUBLIC WORKS DIRECTOR

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.

