

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1146-MWD-E TCEQ ID: RN101608347 CASE NO.: 37992

RESPONDENT NAME: City of Austwell

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: City of Austwell Plant, located southwest of the intersection of Stevens and Main Street, Austwell, Refugio County</p> <p>TYPE OF OPERATION: Wastewater treatment plant</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 April 26, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Thomas Jecha, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-2576; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: The Honorable Mustafa W. Curtess, Mayor, City of Austwell, P.O. Box 147, Austwell, Texas 77950 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: June 23, 2009</p> <p>Date of NOV/NOE Relating to this Case: June 30, 2009 (NOB)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>1) Failure to install, prior to plant start-up, 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 Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011117001, Operational Requirements No. 4].</p> <p>2) Failure to have all required monitoring and reporting records available for review upon request. Specifically, meter calibration and monitoring activity records including the date and time of sampling and analysis for dissolved oxygen, pH, and chlorine residual, were not provided as requested [30 TEX. ADMIN. CODE §§ 305.125(1) and (11)(B), and 319.7(a) and (c), and TPDES Permit No. WQ0011117001, Monitoring and Reporting Requirements Nos. 3.b. and 3.c.].</p> <p>3) Failure to ensure measurements, tests, and calculations are accurately accomplished in a representative manner. Specifically, loading parameters were not being accurately calculated [30 TEX. ADMIN. CODE § 305.125(1) and TPDES Permit No. WQ0011117001, Monitoring</p>	<p>Total Assessed: \$4,440</p> <p>Total Deferred: \$4,440 <input type="checkbox"/> Expedited Settlement <input checked="" type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$0</p> <p>The Financial Assurance Section of the Commission's Financial Administration Division reviewed financial documentation submitted by the Respondent and determined that the Respondent is unable to pay the administrative penalty.</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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent plans to provide emergency power for the wastewater treatment plant by either obtaining a mobile generator or installing a stationary generator currently owned by the Respondent.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately after the effective date of this Agreed Order, begin accurately calculating all loading parameters and performing manganese corrections for chlorine analyses.</p> <p>b. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Submit meter calibration and monitoring activity records including the date and time of sampling and analysis for dissolved oxygen, pH, and chlorine residual for June 2009; and</p> <p>ii. Conduct training to ensure that all quality assurance measures are performed properly.</p> <p>c. 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</p> <p>d. 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 Provisions a. through c.</p>

<p>and Reporting Requirements No. 2]. 4) Failure to analyze effluent according to test methods specified in 40 CODE OF FEDERAL REGULATIONS Part 136 or more recent editions of Standard Methods for the Examination of Water and Wastewater than those cited in Part 136. Specifically, manganese corrections for chlorine analyses of treated effluent were not being performed [30 TEX. ADMIN. CODE § 319.11(c)].</p>		
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Additional ID No(s): TPDES Permit No. WQ0011117001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	6-Jul-2009	Screening	21-Jul-2009	EPA Due	
	PCW	28-Jul-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Austwell
Reg. Ent. Ref. No.	RN101608347
Facility/Site Region	14-Corpus Christi
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37992	No. of Violations	4
Docket No.	2009-1146-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Thomas Jecha
		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 11.0% Enhancement Subtotals 2, 3, & 7

Notes: Enhancement for two NOV's with self-reported effluent data, one NOV with same or similar violations, and one NOV with dissimilar violations issued to this Facility within the past five years.

Culpability No 0.0% Enhancement Subtotal 4

Notes: The Respondent 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	\$636
Approx. Cost of Compliance	\$11,750

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Reduction Adjustment

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

Notes:

PAYABLE PENALTY

Screening Date 21-Jul-2009

Docket No. 2009-1146-MWD-E

PCW

Respondent City of Austwell

Policy Revision 2 (September 2002)

Case ID No. 37892

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101608347

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha

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	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments 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 for two NOVs with self-reported effluent data, one NOV with same or similar violations, and one NOV with dissimilar violations issued to this Facility within the past five years.

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

Screening Date 21-Jul-2009	Docket No. 2009-1146-MWD-E	PCW
Respondent City of Austwell	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 37992	<small>PCW Revision October 30, 2008</small>	
Reg. Ent. Reference No. RN101808347		
Media [Statute] Water Quality		
Enf. Coordinator Thomas Jecha		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	30 Tex. Admin. Code § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011117001, Operational Requirements No. 4	
Violation Description	Failed to install prior to plant start-up, 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	<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>

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

Adjustment

Violation Events

Number of Violation Events Number of violation days

	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

mark only one with an x

Violation Base Penalty

One monthly event is recommended from the June 23, 2008 record review until screening on July 21, 2009.

Good Faith Efforts to Comply

Reduction

	<small>Before NOV</small>	<small>NOV to EDPRP/Settlement Offer</small>
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	<small>(mark with x)</small>

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

Violation Subtotal

Economic Benefit (EB) for this violation

Estimated EB Amount

Statutory Limit Test

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent City of Austwell
Case ID No. 37992
Reg. Ent. Reference No. RN101608347
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description: No commas or \$	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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)	\$11,000	23-Jun-2009	25-May-2010	0.92	\$506	n/a	\$506

Notes for DELAYED costs

Estimated cost for a standby generator to provide back-up power. The date required is the record review date and the final date is the estimated 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

\$11,000

TOTAL

\$506

<p>Screening Date 21-Jul-2009</p> <p>Respondent City of Austwell</p> <p>Case ID No. 37992</p> <p>Reg. Ent. Reference No. RN101608347</p> <p>Media [Statute] Water Quality</p> <p>Enf. Coordinator Thomas Jecha</p> <p>Violation Number 2</p> <p>Rule Cite(s) 30 Tex. Admin. Code §§ 305.126(1) and (11)(B), and 319.7(a) and (c), and TPDES Permit No. WQ0011117001, Monitoring and Reporting Requirements Nos. 3. b. and 3. c.</p> <p>Violation Description Failed to have all required monitoring and reporting records available for review upon request. Specifically, meter calibration and monitoring activity records including the date and time of sampling and analysis for dissolved oxygen, pH, and chlorine residual, were not provided as requested.</p>	<p>Docket No. 2009-1146-MWD-E</p> <p style="text-align: right;">PCW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision October 30, 2009</i></p>																					
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<p>Violation Events</p> <p>Number of Violation Events: 1 Number of violation days: 28</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td rowspan="7" style="width:10%; vertical-align: middle;"><i>mark only one with an x</i></td> <td style="width:15%;">daily</td> <td></td> </tr> <tr> <td>weekly</td> <td></td> </tr> <tr> <td>monthly</td> <td></td> </tr> <tr> <td>quarterly</td> <td></td> </tr> <tr> <td>semiannual</td> <td></td> </tr> <tr> <td>annual</td> <td></td> </tr> <tr> <td>single event</td> <td style="text-align: center;">x</td> </tr> </table> <p style="text-align: right;">Violation Base Penalty \$500</p> <p style="text-align: center; border: 1px solid black; padding: 5px;">One single event is recommended.</p>		<i>mark only one with an x</i>	daily		weekly		monthly		quarterly		semiannual		annual		single event	x						
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<p>Economic Benefit (EB) for this violation Statutory Limit Test</p> <p>Estimated EB Amount \$7 Violation Final Penalty Total \$555</p> <p style="text-align: right;">This violation Final Assessed Penalty (adjusted for limits) \$555</p>																						

Economic Benefit Worksheet

Respondent City of Austwell
Case ID No. 37992
Reg. Ent. Reference No. RN101608347
Media Water Quality
Violation No. 2

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	\$200	23-Jun-2009	15-Mar-2010	0.73	\$7	n/a	\$7
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 submit meter calibration records and monitoring activity records that include the date and time of sampling and analysis for dissolved oxygen, pH, and chlorine residual. The date required is the record review date and the final date is the estimated 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 \$200

TOTAL \$7

<p>Screening Date 21-Jul-2009 Respondent City of Austwell Case ID No. 37992 Reg. Ent. Reference No. RN101608347 Media [Statute] Water Quality Enf. Coordinator Thomas Jecha Violation Number 3 Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TPDES Permit No. WQ0011117001, Monitoring and Reporting Requirements No. 2</p>	<p>Docket No. 2009-1146-MWD-E PCW <i>Policy Revision 2 (September 2002)</i> <i>PCW Revision October 30, 2009</i></p>																												
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<p>This violation Final Assessed Penalty (adjusted for limits) \$555</p>																													

Economic Benefit Worksheet

Respondent City of Austwell
 Case ID No. 37992
 Reg. Ent. Reference No. RN101808347
 Media Water Quality
 Violation No. 3

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	\$250	23-Jun-2009	15-Mar-2010	0.73	\$9	n/a	\$9
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$200	23-Jun-2009	1-Jan-2010	0.53	\$5	n/a	\$5

Notes for DELAYED costs: Estimated cost to correctly calculate loading parameters and submit revised DMRs and to conduct training to ensure that all quality assurance measures are performed properly. The date required is the record review date and the final date is the estimated 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	\$450	TOTAL	\$14
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<p>Screening Date 21-Jul-2009</p> <p>Respondent City of Austwell</p> <p>Case ID No. 37992</p> <p>Reg. Ent. Reference No. RN101608347</p> <p>Media [Statute] Water Quality</p> <p>Enf. Coordinator Thomas Jecha</p> <p>Violation Number <input type="text" value="4"/></p> <p>Rule Cite(s) <input type="text" value="30 Tex. Admin. Code § 319.11(c)"/></p> <p>Violation Description <input type="text" value="Failed to analyze effluent according to test methods specified in 40 Code of Federal Regulations Part 136 or more recent editions of Standard Methods for the Examination of Water and Wastewater than those cited in Part 136. Specifically, manganese corrections for chlorine analyses of treated effluent were not being performed."/></p>	<p>Docket No. 2009-1146-MWD-E</p> <p style="text-align: right;">PCW <small>Policy Revision 2 (September 2002) PCW Revision October 30, 2009</small></p>																								
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<p>>> Environmental, Property and Human Health Matrix</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td rowspan="3" style="width:10%; text-align: center; vertical-align: middle;">OR</td> <td style="width:10%;"></td> <td colspan="3" style="text-align: center;">Harm</td> <td rowspan="3" style="width:10%;"></td> </tr> <tr> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <td style="text-align: center;">Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td style="text-align: center;">Percent <input type="text" value="6%"/></td> </tr> <tr> <td></td> <td style="text-align: center;">Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td></td> </tr> </table>		OR		Harm				Release	Major	Moderate	Minor	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="6%"/>		Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>				
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<p>Economic Benefit (EB) for this violation</p> <p>Statutory Limit Test</p> <p>Estimated EB Amount <input type="text" value="\$108"/> Violation Final Penalty Total <input type="text" value="\$555"/></p> <p style="text-align: right;">This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$555"/></p>																									

Economic Benefit Worksheet

Respondent City of Austwell
 Case ID No. 37992
 Reg. Ent. Reference No. RN101808347
 Media Water Quality
 Violation No. 4

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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See delayed costs for violation No. 3.

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)	\$100	23-Jun-2009	15-Feb-2010	1.57	\$8	\$100	\$108

Notes for AVOIDED costs

Estimated cost to perform manganese corrections for chlorine analysis. The date required is the record review date and the final date is the estimated date of compliance.

Approx. Cost of Compliance

\$100

TOTAL

\$108

Compliance History Report

Customer/Respondent/Owner-Operator: CN800342307 City of Austwell Classification: AVERAGE Rating: 2.06
Regulated Entity: RN101608347 CITY OF AUSTWELL PLANT Classification: AVERAGE Site Rating:0.17
ID Number(s): WASTEWATER PERMIT WQ0011117001
WASTEWATER PERMIT TPDES0048038
WASTEWATER PERMIT TX0048038
WASTEWATER LICENSING LICENSE WQ0011117001
Location: SW of the intersection of Stevens and Main St in the City of Austwell in Refugio County, Texas

TCEQ Region: REGION 14 - CORPUS CHRISTI

Date Compliance History Prepared: July 08, 2009

Agency Decision Requiring Compliance Enforcement

Compliance Period: July 08, 2004 to July 08, 2009

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

Name: Thomas Jecha Phone: 239 - 2576

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A

6 Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

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

N/A

- C. Chronic excessive emissions events.

N/A

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

1	07/19/2004	(356413)
2	08/24/2004	(356414)
3	09/16/2004	(356415)
4	10/18/2004	(356416)
5	11/10/2004	(384248)
6	12/20/2004	(384249)
7	01/20/2005	(384250)
8	02/14/2005	(422187)
9	03/17/2005	(691862)
10	04/11/2005	(371281)
11	04/15/2005	(422188)
12	05/18/2005	(422189)

13	06/20/2005	(422190)
14	07/21/2005	(422191)
15	08/15/2005	(443105)
16	09/19/2005	(443106)
17	10/13/2005	(407350)
18	10/17/2005	(472755)
19	11/14/2005	(472756)
20	12/22/2005	(472757)
21	01/25/2006	(472758)
22	02/16/2006	(472753)
23	03/13/2006	(472754)
24	04/14/2006	(501086)
25	05/19/2006	(501087)
26	06/16/2006	(501088)
27	07/24/2006	(523281)
28	08/21/2006	(523282)
29	09/11/2006	(523283)
30	10/16/2006	(548149)
31	12/04/2006	(548150)
32	12/15/2006	(548151)
33	01/11/2007	(581106)
34	01/18/2007	(532356)
35	02/16/2007	(581101)
36	03/19/2007	(581102)
37	04/16/2007	(581103)
38	05/18/2007	(581104)
39	06/20/2007	(581105)
40	07/26/2007	(608099)
41	08/30/2007	(608100)
42	09/27/2007	(608101)
43	10/25/2007	(621649)
44	12/03/2007	(621650)
45	12/21/2007	(621651)
46	01/23/2008	(673596)
47	02/19/2008	(673595)
48	04/01/2008	(691863)
49	05/14/2008	(691864)
50	06/18/2008	(691865)
51	07/17/2008	(691866)
52	08/29/2008	(712860)
53	09/24/2008	(712861)
54	10/22/2008	(712862)
55	11/19/2008	(729046)
56	11/19/2008	(729047)
57	12/29/2008	(729048)
58	01/09/2009	(721009)
59	01/20/2009	(752243)
60	02/24/2009	(752242)
61	04/06/2009	(741328)
62	06/30/2009	(759660)

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

Date: 08/26/2005 (407350)

CN600342307

Self NO
Report?

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter O 305.535(c)(1)
IV.2.g. OP

Description: Failure to prevent the unauthorized discharge of raw sewage on two occurrences.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(9)
III.7.a. OP

Description: Failure to provide verbal and written notification of the unauthorized discharges.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
V.1. OP

Description: Failure to ensure that the facility and all its systems of treatment are properly maintained.

Date: 09/30/2006 (548149) CN600342307

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: 10/31/2006 (548150) CN600342307

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: 01/09/2009 (721009) CN600342307

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
Operational Requirements 1. (page 9) PERMIT

Description: Failure to at all times ensure that the facility is properly operated and maintained.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 309, SubChapter B 309.13(g)

Description: Failure to carry out the nuisance odor prevention plan at all times, ensure sufficient property ownership or interest and maintain easements prohibiting residential structures, as appropriate.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(5)
Operational Requirements 4. (page 10) PERMIT

Description: Failure to install adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures prior to plant start-up.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Final Effluent Limitations 2. (page 2) PERMIT

Description: Failure to ensure the effluent contains a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow).

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.4

Description: Failure to monitor each parameter included in the facility's permit.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)
Monitoring and Reporting 3.c. (page 5) PERMIT

Description: Failure to ensure records of monitoring activities include the date, time and place of sample or measurement, along with the date and time of analysis.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Monitoring and Reporting 2. (page 4) PERMIT

Description: Failure to ensure measurements, tests and calculations are accurately accomplished in a representative manner.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.7(c)

Description: Failure to ensure all records and information resulting from the required monitoring activities, including, but not limited to, all records concerning measurements and analyses performed and concerning calibration and maintenance of flow measurement and other instrumentation, are retained for a minimum of three years.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Monitoring and Reporting 1. (page 4) PERMIT

Description: Failure to submit a monthly effluent report to the Enforcement Division (MC 224) by the 20th day of the month for each discharge which is described by this permit whether or not a discharge is made for that month.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.11(c)

Description: Failure to analyze effluents according to test methods specified in 40 CFR Part 136 or more recent editions of Standard Methods for the Examination of Water and Wastewater than those cited in Part 136.

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.11(d)

Description: Failure to ensure flow measurements, equipment, installation, and procedures conform to those prescribed in the Water Measurement Manual, United States Department of the Interior Bureau of Reclamation, Washington, D.C., or methods that are equivalent as approved by the executive director.

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 AUSTWELL
RN101608347**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-1146-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 Austwell ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a wastewater treatment plant located southwest of the intersection of Stevens and Main Street in Austwell in Refugio 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 5, 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 Four Thousand Four Hundred Forty Dollars (\$4,440) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Financial Assurance Section of the Commission's Financial Administration

Division reviewed financial documentation submitted by the City and determined that the City is unable to pay the administrative penalty. Therefore, the Four Thousand Four Hundred Forty Dollar (\$4,440) penalty 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, including the payment schedule, 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 plans to provide emergency power for the wastewater treatment plant by either obtaining a mobile generator or installing a stationary generator currently owned by the City.
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:

1. Failed to install prior to plant start-up, 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 Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011117001, Operational Requirements No. 4, as documented during a record review conducted on June 23, 2009.
2. Failed to have all required monitoring and reporting records available for review upon request, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and (11)(B), and 319.7(a) and (c), and TPDES Permit No. WQ0011117001, Monitoring and Reporting Requirements Nos. 3.b. and 3.c., as documented during a record review conducted on June 23, 2009. Specifically, meter calibration and monitoring activity records including the date and time of sampling and analysis for dissolved oxygen, pH, and chlorine residual, were not provided as requested.

3. Failed to ensure measurements, tests and calculations are accurately accomplished in a representative manner, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Permit No. WQ0011117001, Monitoring and Reporting Requirements No. 2, as documented during a record review conducted on June 23, 2009. Specifically, loading parameters were not being accurately calculated.
4. Failed to analyze effluent according to test methods specified in 40 Code of Federal Regulations Part 136 or more recent editions of Standard Methods for the Examination of Water and Wastewater than those cited in Part 136, in violation of 30 TEX. ADMIN. CODE § 319.11(c), as documented during a record review conducted on June 23, 2009. Specifically, manganese corrections for chlorine analyses of treated effluent were not being performed.

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 be assessed an administrative penalty as set forth in Section I, Paragraph 6 above. The imposition 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.
2. It is further ordered that the City shall undertake the following technical requirements:
 - a. Immediately after the effective date of this Agreed Order, begin accurately calculating all loading parameters and performing manganese corrections for chlorine analyses;
 - b. Within 30 days after the effective date of this Agreed Order:
 - i. Submit meter calibration and monitoring activity records including the date and time of sampling and analysis for dissolved oxygen, pH, and chlorine residual for June 2009; and
 - ii. Conduct training to ensure that all quality assurance measures are performed properly.
 - c. 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. WQ0011117001, Operational Requirements No. 4; and
 - d. 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 Nos. 2.a. through 2.c. 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
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

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

Jolan Szalinski
For the Executive Director

4/23/2010
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.

Mustafa W. Curtess
Signature

Feb. 08, 2010
Date

MUSTAFA W. CURTESS
Name (Printed or typed)
Authorized Representative of
City of Austwell

MAYOR
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.