

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2010-0455-MWD-E **TCEQ ID:** RN101608024 **CASE NO.:** 39368

**RESPONDENT NAME:** City of Port Arthur

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Sabine Pass Facility, located at 5137 South 4th Avenue, approximately 0.3 mile north of Tremont Street, Port Arthur, Jefferson County</p> <p><b>TYPE OF OPERATION:</b> Wastewater treatment system</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 August 2, 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 169, (512) 239-2569; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Steve Fitzgibbons, City Manager, City of Port Arthur, P.O. Box 1089, Port Arthur, Texas 77641  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> February 25, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> March 18, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a records review.</p> <p><b>WATER</b></p> <p>Failure to comply with permitted effluent limitations for total suspended solids and flow [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010364010, Effluent Limitations and Monitoring Requirements No. 1].</p>	<p><b>Total Assessed:</b> \$5,160</p> <p><b>Total Deferred:</b> \$1,032  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$4,128</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Site 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>Ordering Provisions:</b></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 permitted effluent limitations of TPDES Permit No. WQ0010364010, 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): WQ0010364010



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

## TCEQ

<b>DATES</b>	Assigned	22-Mar-2010		
	PCW	29-Mar-2010	Screening	22-Mar-2010
			EPA Due	

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	City of Port Arthur		
<b>Reg. Ent. Ref. No.</b>	RN101608024		
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	39368	<b>No. of Violations</b>	1
<b>Docket No.</b>	2010-0455-MWD-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Jordan Jones
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** \$3,000

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

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

**Compliance History** 72.0% Enhancement **Subtotals 2, 3, & 7** \$2,160

**Notes** An enhancement is recommended for ten self-reported effluent violations, one NOV with dissimilar violations, and one Agreed Order with denial language.

**Culpability** No 0.0% Enhancement **Subtotal 4** \$0

**Notes** The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** \$0

**Economic Benefit** 0.0% Enhancement **Subtotal 6** \$0

Total EB Amounts \$1,081  
Approx. Cost of Compliance \$10,000  
*\*Capped at the Total EB \$ Amount*

**SUM OF SUBTOTALS 1-7** **Final Subtotal** \$5,160

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

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount** \$5,160

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** \$5,160

**DEFERRAL** 20.0% Reduction **Adjustment** -\$1,032

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** \$4,128

Screening Date: 22-Mar-2010

Docket No: 2010-0455-MWD-E

PCW

Respondent: City of Port Arthur

Policy Revision 2 (September 2002)

Case ID No: 39368

PCW Revision October 30, 2008

Reg. Ent. Reference No: RN101608024

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)	10	50%
	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%
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) 72%

>> 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 for ten self-reported effluent violations, one NOV with dissimilar violations, and one Agreed Order with denial language.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 72%

Screening Date 22-Mar-2010

Docket No. 2010-0455-MWD-E

PCW

Respondent City of Port Arthur

Policy Revision 2 (September 2002)

Case ID No. 39368

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101608024

Media [Statute] Water Quality

Enf. Coordinator Jordan Jones

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. WQ0010364010; Effluent Limitations and Monitoring Requirements No. 1

Violation Description

Failed to comply with permitted effluent limits, as documented in a record review conducted on February 25, 2010. See attached Effluent Limit Violation 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

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 as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3

153 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,000

Three quarterly events are recommended.

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 \$3,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,081

Violation Final Penalty Total \$5,160

This violation Final Assessed Penalty (adjusted for limits) \$5,160

# Economic Benefit Worksheet

**Respondent:** City of Port Arthur  
**Case ID No.:** 39368  
**Reg. Ent. Reference No.:** RN101608024  
**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
No commas or \$							

### Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$10,000	31-Dec-2008	28-Feb-2011	2.16	\$1,081	n/a	\$1,081
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost to evaluate the causes of the effluent violations and to implement necessary rehabilitation to the wastewater treatment system. Date required is the month the first non-compliant excursion was documented. Final date is the expected date of compliance.

### Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$1,081

**Effluent Limit Violation Table**

Respondent	City of Port Arthur
ID Number(s)	TPDES Permit No. WQ0010364010; Case No. 39368
Docket Number	2010-0455-MWD-E
Ent. Coordinator	Jordan Jones

Corresponds to Violation Number: 1

*EFFLUENT PARAMETER  
Permit Limit*

Effluent Parameter	Flow	Total Suspended Solids Daily	Total Suspended Solids
	Daily Avg.	Avg. Conc.	Daily Avg. Loading
<i>Month/Year</i>	Limit = 0.30 MGD	Limit = 20 mg/L	Limit = 50 lbs/day
12/31/2008	c	26.6	c
5/31/2009	c	25.75	c
9/30/2009	c	22.4	64.05
10/31/2009	0.348	29.5	c
11/30/2009	0.311	c	70.5
	conc. = concentration	avg. = average	lbs/day = pounds per day
	c = compliant	mg/L = milligrams per liter	MGD = million gallons per day



# Compliance History Report

Customer/Respondent/Owner-Operator:	CN800132021	City of Port Arthur	Classification: AVERAGE	Rating: 5.16
Regulated Entity:	RN101808024	SABINE PASS FACILITY	Classification: AVERAGE	Site Rating: 2.47
ID Number(s):	WASTEWATER	PERMIT		WQ0010364010
	WASTEWATER	PERMIT		TPDES0024201
	WASTEWATER	PERMIT		TX0024201
Location:	LOCATED AT 5137 SOUTH 4TH AVENUE, APPROXIMATELY 0.3 MILE NORTH OF TREMONT STREET IN JEFFERSON COUNTY, TEXAS			
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	March 29, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 29, 2005 to March 29, 2010			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	<u>Jordan Jones</u>	Phone:	<u>512-239-2569</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: 03/12/2009 ADMINORDER 2007-0787-MWD-E
  - Classification: Moderate
  - Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
  - Rqmt Prov: WQ 10364-010 PERMIT
  - Description: Failure to properly maintain the collection system.
  - Classification: Minor
  - Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
  - Rqmt Prov: OpR1 PERMIT
  - Description: Failure to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.
  - Classification: Minor
  - Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
  - Rqmt Prov: OpR1 PERMIT
  - Description: Failure to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.
  - Classification: Minor
  - Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
  - Rqmt Prov: OpR1 PERMIT
  - Description: Failure to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.
  - Classification: Moderate
  - Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)
  - Rqmt Prov: PC 2g PERMIT
  - Description: Failure to prevent the unauthorized discharge of wastewater into or adjacent to the waters of the state.
- B. Any criminal convictions of the state of Texas and the federal government.
  - N/A
- C. Chronic excessive emissions events.
  - N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
  - 1 04/25/2005 (420750)
  - 2 05/18/2005 (420751)
  - 3 06/20/2005 (420752)

4	08/24/2005	(441742)
5	09/13/2005	(441743)
6	10/18/2005	(470265)
7	11/21/2005	(470266)
8	12/19/2005	(470267)
9	01/19/2006	(470268)
10	02/17/2006	(470263)
11	03/22/2006	(470264)
12	04/13/2006	(499361)
13	05/15/2006	(499362)
14	06/14/2006	(499363)
15	07/13/2006	(499364)
16	08/28/2006	(521405)
17	09/15/2006	(521406)
18	10/16/2006	(545938)
19	11/13/2006	(577870)
20	12/15/2006	(545939)
21	01/22/2007	(577871)
22	02/20/2007	(577864)
23	03/19/2007	(577865)
24	04/09/2007	(577866)
25	04/17/2007	(577869)
26	04/18/2007	(556215)
27	05/16/2007	(577867)
28	06/11/2007	(577868)
29	07/11/2007	(602324)
30	08/14/2007	(602325)
31	09/17/2007	(602326)
32	10/17/2007	(620604)
33	11/13/2007	(620605)
34	12/12/2007	(620606)
35	01/17/2008	(672780)
36	02/19/2008	(672779)
37	03/24/2008	(690803)
38	04/17/2008	(690804)
39	05/19/2008	(690805)
40	06/23/2008	(711677)
41	07/21/2008	(711678)
42	08/18/2008	(711679)
43	10/21/2008	(728157)
44	11/20/2008	(728158)
45	12/19/2008	(728159)
46	01/15/2009	(751107)
47	02/12/2009	(751106)
48	03/12/2009	(768981)
49	03/25/2009	(738964)
50	04/20/2009	(768982)
51	05/15/2009	(768983)
52	09/28/2009	(776589)
53	03/19/2010	(793670)

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

Date:	04/30/2005 (420751)	CN600132021
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 (470266) CN600132021  
 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: 01/31/2007 (577864) CN600132021  
 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: 04/30/2008 (890805) CN600132021  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 11/30/2008 (728159) CN600132021  
 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 (751107) CN600132021  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 03/24/2009 (738864) CN600132021  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)  
 OpR 4 PERMIT  
 Description: Failure by City of Port Arthur Sabine Pass wastewater treatment plant 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.

Date: 05/31/2009 CN600132021  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 09/30/2009 CN600132021  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 10/31/2009 CN600132021  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter  
 Date: 11/30/2009 CN600132021  
 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
- K. Sites Outside of Texas  
N/A



# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF PORT ARTHUR  
RN101608024**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2010-0455-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 Port Arthur ("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 appear before the Commission and together stipulate that:

1. The Respondent owns and operates a wastewater treatment system located at 5137 South 4th Avenue, approximately 0.3 mile north of Tremont Street in Jefferson County, Texas (the "Facility").
2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 23, 2010.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Five Thousand One Hundred Sixty Dollars (\$5,160) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Thousand One Hundred Twenty-Eight Dollars (\$4,128) of the

administrative penalty and One Thousand Thirty-Two Dollars (\$1,032) is deferred contingent upon the Respondent'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 Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent 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 Respondent 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 Respondent 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 Respondent is alleged to have failed to comply with permitted 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. WQ0010364010, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on February 25, 2010 and shown in the table below.

Effluent Parameter	Flow Daily Avg.	Total Suspended Solids Daily Avg. Conc.	Total Suspended Solids Daily Avg. Loading
<i>Month/Year</i>	Limit = 0.30 MGD	Limit = 20 mg/L	Limit = 50 lbs/day
12/31/2008	c	26.6	c
5/31/2009	c	25.75	c
9/30/2009	c	22.4	64.05
10/31/2009	0.348	29.5	c
11/30/2009	0.311	c	70.5
	conc. = concentration	avg. = average	lbs/day = pounds per day
	c = compliant	mg/L = milligrams per liter	MGD = million gallons per day

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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 Port Arthur, Docket No. 2010-0455-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, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0010364010, 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine 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  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1892

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. 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.
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 Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, 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

*[Signature]*  
For the Executive Director

\_\_\_\_\_  
Date

7/9/2010

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]*  
Signature

\_\_\_\_\_  
Date

6/4/10

Steve Fitzgibbon  
Name (Printed or typed)  
Authorized Representative of  
City of Port Arthur

\_\_\_\_\_  
Title

City Manager

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.

