

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2010-0092-MWD-E **TCEQ ID:** RN101523066 **CASE NO.:** 39016
RESPONDENT NAME: City of Penelope

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 Penelope, located approximately 2,000 feet southeast of the intersection of Farm-to-Market Roads 308 and 2114, adjacent to the north side of Farm-to-Market Road 2114, at the southeast edge of Penelope, Hill County</p> <p>TYPE OF OPERATION: Wastewater treatment system</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 July 5, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Ms. Sharon Blue, SEP Coordinator, Litigation Division, MC 175, (512) 239-2223 TCEQ Enforcement Coordinator: Mr. Jordan Jones, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-2569; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: The Honorable Ben Neal, Mayor, City of Penelope, P.O. Box 125, Penelope, Texas 76676 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 14, 2009</p> <p>Date of NOV/NOE Relating to this Case: January 14, 2010 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>1) Failure to comply with permit effluent limits for biochemical oxygen demand and total suspended solids [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013621001, Effluent Limitations and Monitoring Requirements No. 1].</p> <p>2) Failure to timely submit effluent monitoring results at the intervals specified in the permit or to include all required data in the discharge monitoring report ("DMR"). Specifically, the DMRs for the monitoring periods ending September 30, 2008 and October 31, 2008 were not submitted until January 29, 2010, and for the monitoring period ending May 31, 2009, the DMR failed to include the parameter data for 5-day biochemical oxygen demand single grab [30 TEX. ADMIN. CODE §§ 305.125(17) and 319.1 and TPDES Permit No. WQ0013621001, Monitoring and Reporting Requirements No. 1.</p>	<p>Total Assessed: \$10,197</p> <p>Total Deferred: \$2,039 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$8,158</p> <p>Total Paid (Due) to General Revenue: \$0</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 submitted the DMRs for the monitoring periods ending September 30, 2008 and October 31, 2008 on January 29, 2010.</p> <p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Within 30 days after the effective date of the Agreed Order, submit a revised DMR for the monitoring period ending May 31, 2009 to include the parameter data for 5-day biochemical oxygen demand single grab;</p> <p>b. Within 30 days after the effective date of the Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified monthly DMRs;</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provisions 2.a. and 2.b.; and</p> <p>d. 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. WQ0013621001, including specific corrective actions that were implemented by the Respondent to achieve compliance and copies of the most current self-reported DMRs, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.</p>

Additional ID No(s): WQ0013621001

Attachment A
Docket Number: 2010-0092-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Penelope
Penalty Amount:	Eight Thousand One Hundred Fifty-Eight Dollars (\$8,158)
SEP Offset Amount:	Eight Thousand One Hundred Fifty-Eight Dollars (\$8,158)
Type of SEP:	Custom (pre-approved concept)
Location of SEP:	Hill County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order for the Respondent to perform a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall hold a cleanup event to collect solid waste and remove and properly dispose of or recycle used tires throughout the city and surrounding areas, at no cost to the residents. The Respondent shall ensure that the event:

- occurs after normal work hours or on weekend days if respondent's personnel are used, or in the alternative, a contractor may be used during regular business hours;
- offers to the public a no-cost option to dispose of tires and solid waste;
- if advertised, that the event is advertised in a newspaper of large circulation in the geographic area and that the advertisement includes a statement that the project is being performed as a Supplemental Environmental Project as a result of an enforcement action brought by TCEQ

The Respondent shall utilize a contractor to haul and properly dispose of or recycle the collected tires and solid waste. At the Executive Director's discretion, the Respondent may receive SEP Offset Amount credit only for the direct cost of implementing the project. Specifically, the Respondent may receive SEP Offset Amount credit for costs of equipment, materials, and contract labor costs in accordance with TCEQ expenditure restrictions on the use of SEP funds. Credit for the use of the SEP Offset Amount shall be limited to costs that are actual, documented, reasonable, and necessary to performance of the SEP. The Respondent must competitively bid work for the project to ensure that costs are reasonable and customary. The Respondent may receive credit for the reasonable and customary costs of labor if its employees are used in implementing the SEP. The Respondent shall not receive credit for volunteer labor or equipment. The SEP Offset Amount will be used for the direct cost of the project and no portion of the SEP Offset Amount shall be spent on the Respondent's administrative costs. The Respondent shall also not receive credit for gratuities and/or inducements (food, refreshments, or other gifts) for volunteers.

The Respondent shall perform this project in accordance with all federal, state and local environmental laws and regulations. The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of used tires that can emit chemicals into the soil and water, as well as help rid the community of the dangers and health threats associated with mosquitoes that can carry West Nile virus. The cleanup will also help prevent release of harmful chemicals into the atmosphere from potential tire fires.

C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A. Respondent understands that this SEP may cost more than the Offset Amount to complete.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent shall begin implementation of the SEP. The Respondent shall perform the SEP in accordance with the schedule shown in the Performance Schedule Deliverable table below, and shall have completed the SEP in its entirety within one year following the effective date of this Agreed Order.

Days from Effective Order Date	Percentage of Project to Be Completed	Performance Schedule Deliverable
30	Begin	Notice of Commencement describing actions taken to begin project
90	1/4	Receive approval from TCEQ and Bid Project
120	1/2	Receive approval from TCEQ for advertisement and publish
180	3/4	Provide notice of event date to TCEQ
365	Completion	Final completion of SEP with Final Report to be provided within 60 days of completion date, as described in Section 3.B., below.

3. Reporting

A. Progress Reports

The Respondent shall submit Progress Reports to the TCEQ SEP Coordinator according to the schedule provided in the Progress Report Deliverable table below.

Days from Effective Order Date	Progress Report Deliverable
30	Notice of Commencement describing actions being taken to begin project
90	Second Progress Report to provide report of actions taken to implement project.
120	Third Progress Report to provide report of actions taken to implement project.
210	Fourth Progress Report to provide report of actions taken to implement project.
280	Fifth Progress Report to provide report of actions taken to implement project.
365	Notice of SEP Completion, with Final Report to follow within 60 days of completion of project.

B. Final Report

Within 60 days after completion of the project, the Respondent shall submit a Final Report to the TCEQ which will include:

1. A summary total of the amount of costs incurred;
2. An itemized list of expenditures and costs incurred.
 - a. Copies of receipts, checks, invoices, and other verifying documentation must be included with the Final Report; and
 - b. If Respondent requests to receive credit for use of its own employees, time card records certified by a supervisor and confirmed by respondent’s Payroll section will be required.
3. Copies of the following:
 - a. Proof of advertisement of the event (the advertisement must include the statement that the SEP was performed as a result of a TCEQ enforcement action); and
 - b. Proof of publication of invitation for and selection of competitive bids for the project;
4. A statement of the quantifiable environmental benefits. The Respondent must quantify the environmental benefit of the project;
5. Map showing specific locations of the collection site (and any cleanup sites, if applicable);
6. Photographs of the project showing the collected tires and solid waste;
7. Manifests sufficient to show proof of proper disposal and/or recycling of the tires and solid waste. Documentation must be provided to show proof of proper disposal of the collected tires and solid waste;
8. Any additional information the Respondent believes will, or that is requested by TCEQ to demonstrate compliance with this Attachment A.

4. Additional Information and Access

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

5. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

6. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

7. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program. Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

8. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other orders negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	20-Jan-2010	Screening	21-Jan-2010	EPA Due	
	PCW	25-Jan-2010				

RESPONDENT/FACILITY INFORMATION			
Respondent	City of Penelope		
Reg. Ent. Ref. No.	RN101523066		
Facility/Site Region	9-Waco	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39016	No. of Violations	3
Docket No.	2010-0092-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Jordan Jones
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,300
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	224.0% Enhancement	Subtotals 2, 3, & 7	\$7,392
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Notes: An enhancement is recommended for 38 self-reported effluent violations, two NOV's with same or similar violations, two NOV's with dissimilar violations, and one agreed order with denial language.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement	Subtotal 6	\$0
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Total EB Amounts \$1,057
 Approx. Cost of Compliance \$10,650
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$10,692
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OTHER FACTORS AS JUSTICE MAY REQUIRE	-4.6%	Adjustment	-\$495
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommend reduction in the penalty so that monthly self-reported effluent violations do not overly impact the penalty amount and to prevent double-enhancement of the penalty amount for same violations that were not self-reported.

Final Penalty Amount	\$10,197
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$10,197
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DEFERRAL	20.0% Reduction	Adjustment	-\$2,039
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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	\$8,158
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Screening Date 21-Jan-2010

Docket No. 2010-0092-MWD-E

PCW

Respondent City of Penelope

Policy Revision 2 (September 2002)

Case ID No. 39016

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101523066

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)	40	200%
	Other written NOVs	2	4%
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) 224%

>> 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 38 self-reported effluent violations, two NOVs with same or similar violations, two NOVs with dissimilar violations, and one agreed order with denial language.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 224%

Screening Date: 21-Jan-2010

Docket No. 2010-0092-MWD-E

PCW

Respondent: City of Penelope

Policy Revision 2 (September 2002)

Case ID No. 39016

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101523066

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. WQ0013621001, Effluent Limitations and Monitoring Requirements No. 1

Violation Description

Failed to comply with permit effluent limits, as documented in a record review conducted on October 14, 2009. 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

A simplified model was used to evaluate biochemical oxygen demand 5-day ("BOD5") to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Total suspended solids ("TSS") was also considered. 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 the environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3

212 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/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 \$1,000

Violation Final Penalty Total \$9,270

This violation Final Assessed Penalty (adjusted for limits) \$9,270

Economic Benefit Worksheet

Respondent City of Penetope
Case ID No. 39016
Reg. Ent. Reference No. RN101523086
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
<small>No commas or \$</small>							

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	\$10,000	30-Nov-2008	30-Nov-2010	2.00	\$1,000	n/a	\$1,000
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to determine the cause of noncompliance and to make any necessary repairs/adjustments to the Facility. Date required is the initial date of noncompliance. 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

\$10,000

TOTAL

\$1,000

Screening Date 21-Jan-2010

Docket No. 2010-0092-MWD-E

PCW

Respondent City of Penelope

Policy Revision 2 (September 2002)

Case ID No. 39016

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101523086

Media [Statute] Water Quality

Enf. Coordinator Jordan Jones

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(17) and 319.1, and TPDES Permit No. WQ0013621001, Monitoring and Reporting Requirements No. 1

Violation Description Failed to timely submit effluent monitoring results at the intervals specified in the permit. Specifically, the monthly discharge monitoring reports ("DMRs") for the monitoring periods ending September 30, 2008 and October 31, 2008, were not submitted until January 29, 2010.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
			x

Percent 1%

Matrix Notes

Greater than 70% of the rule requirement was met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 2

61 Number of violation days

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

Violation Base Penalty \$200

Two single events are recommended (one event for each report).

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 \$200

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$54

Violation Final Penalty Total \$618

This violation Final Assessed Penalty (adjusted for limits) \$618

Economic Benefit Worksheet

Respondent City of Penelope
Case ID No. 39016
Reg. Ent. Reference No. RN101523066
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				0.00	\$0	n/a	\$0
Training/Sampling	\$500	20-Oct-2008	20-Sep-2010	1.92	\$48	n/a	\$48
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	20-Oct-2008	29-Jan-2010	1.28	\$6	n/a	\$6

Notes for DELAYED costs

The estimated cost of training Facility personnel to ensure that all reports are submitted timely and completely and to submit the two DMRs. Date Required is the first date the report was due. Final Dates are the estimated date of compliance to conduct training and the date the DMRs were submitted.

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

\$600

TOTAL

\$54

Screening Date 21-Jan-2010

Docket No. 2010-0092-MWD-E

PCW

Respondent: City of Penelope

Policy Revision 2 (September 2002)

Case ID No. 39016

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101523086

Media [Statute] Water Quality

Enf. Coordinator Jordan Jones

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(17) and 319.1, and TPDES Permit No. WQ0013621001, Monitoring and Reporting Requirements No. 1

Violation Description

Failed to include all required data in the discharge monitoring report. Specifically, for the monitoring period ending May 31, 2009, the DMR failed to contain the parameter data for the single grab 5-day biochemical oxygen demand, as documented in a record review on October 14, 2009.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
			X

Percent 1%

Matrix Notes

At least 70% of the rule requirement was met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1

31 Number of violation days

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

Violation Base Penalty \$100

One single event is 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 \$100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$309

This violation Final Assessed Penalty (adjusted for limits) \$309

Economic Benefit Worksheet

Respondent City of Penelope
Case ID No. 39016
Reg. Ent. Reference No. RN101623066
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
<small>No commas in \$</small>							

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)	\$50	31-May-2009	31-May-2010	1.00	\$3	n/a	\$3

Notes for DELAYED costs

See Economic Benefit on Violation No. 2 for training costs and the cost to submit a revised DMR for the monitoring period ending May 31, 2009.

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

\$50

TOTAL

\$3

Effluent Limit Violation Table

Respondent City of Penelope
ID Number(s) TPDES Permit No. WQ0013621001; Case No. 39016
Docket Number 2010-0092-MWD-E
Enf. Coordinator Jordan Jones

Corresponds to Violation Number:

1

***EFFLUENT PARAMETER
Permit Limit***

Effluent Parameters <i>Month/Year</i>	BOD5 Daily Avg. Conc. Limit = 30 mg/L	BOD5 Single Grab Limit = 100 mg/L	Total Suspended Solids Daily Avg. Conc. Limit = 90 mg/L
11/30/2008	c	c	154
12/31/2008	c	c	154
1/31/2009	42.7	500	203
2/28/2009	59	c	378
3/31/2009	37.3	c	275.5
4/30/2009	30.7	c	221
5/31/2009	c	c	175.5
BOD5 = biochemical oxygen demand 5-Day			
conc. = concentration			
avg. = average			
mg/L = milligrams per liter			
c = compliant			

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600797393	City of Penelope	Classification: AVERAGE	Rating: 3.02
Regulated Entity:	RN101523066	CITY OF PENELOPE	Classification: AVERAGE	Site Rating: 3.02
ID Number(s):	WASTEWATER	PERMIT		WQ0013621001
	WASTEWATER	PERMIT		TPDES0112283
	WASTEWATER	PERMIT		TX0112283
	WASTEWATER LICENSING	LICENSE		WQ0013621001
Location:	LOCATED APPROXIMATELY 2,000 FEET SOUTHEAST OF THE INTERSECTION OF FARM-TO-MARKET ROADS 308 AND 2114, ADJACENT TO THE NORTH SIDE OF FARM-TO-MARKET ROAD 2114, AT THE SOUTHEAST EDGE OF THE CITY OF PENELOPE IN HILL COUNTY, TEXAS			
TCEQ Region:	REGION 09 - WACO			
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: Jordan Jones Phone: (512) 239-2569

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

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

Effective Date:	8/10/2007	ADMINORDER 2005-0549-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 maintain compliance with permitted effluent limits.	

- 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. (CGEDS Inv. Track. No.)

1	01/24/2005	(389171)
2	02/23/2005	(350294)
3	03/02/2005	(389172)
4	04/22/2005	(426724)
5	04/22/2005	(426725)
6	06/02/2005	(426726)
7	06/24/2005	(426727)
8	07/05/2005	(426728)
9	08/15/2005	(446955)
10	08/19/2005	(446957)
11	08/30/2005	(397565)
12	09/01/2005	(446956)
13	10/03/2005	(490938)
14	10/24/2005	(490939)
15	12/01/2005	(490940)
16	12/24/2005	(490941)
17	01/23/2006	(490942)
18	03/21/2006	(490936)
19	03/21/2006	(490937)
20	05/15/2006	(505546)
21	06/19/2006	(505547)
22	08/01/2006	(527822)
23	08/01/2006	(527823)
24	09/26/2006	(527824)
25	09/26/2006	(527825)

26 11/02/2006 (629609)
 27 12/27/2006 (629611)
 28 12/27/2006 (629613)
 29 01/30/2007 (629615)
 30 02/15/2007 (536028)
 31 02/23/2007 (514499)
 32 02/26/2007 (629601)
 33 03/23/2007 (629602)
 34 04/20/2007 (629603)
 35 06/05/2007 (629604)
 36 06/20/2007 (629605)
 37 08/20/2007 (629606)
 38 09/25/2007 (629608)
 39 11/02/2007 (629610)
 40 12/05/2007 (629612)
 41 12/27/2007 (629607)
 42 12/27/2007 (629614)
 43 01/24/2008 (676768)
 44 02/25/2008 (676768)
 45 04/02/2008 (695331)
 46 05/16/2008 (641899)
 47 06/02/2008 (716856)
 48 06/02/2008 (716857)
 49 07/09/2008 (716858)
 50 11/18/2008 (704376)
 51 01/02/2009 (755602)
 52 02/11/2009 (759027)
 53 04/28/2009 (772645)
 54 04/28/2009 (772646)
 55 04/28/2009 (772647)
 56 01/14/2010 (779147)

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

Date: 01/31/2005 (426724) CN600797393
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 02/28/2005 (426725) CN600797393
 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: 03/31/2005 (426726) CN600797393
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 04/30/2005 (426727) CN600797393
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter: 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 05/31/2005 (426728) CN600797393
 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: 08/08/2005 (397565) CN600797393
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
 30 TAC Chapter 317 317.4(i)
 OPERATIONAL REQUIREMENTS NO. 1 PG. 9 PERMIT
 Description: Failure by the permittee to ensure that all systems of collection, treatment, and disposal
 are properly operated and maintained.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 319, SubChapter A 319.7(e)
 Operational Requirements, No. 1 Pg. 9 PERMIT
 Description: Failure by the permittee to post hazard signs stating "Danger - Open Tanks - No
 Trespassing".

Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5) Sludge Provisions, Section II. F Pg.22 PERMIT		
Description:	Failure to submit a complete Annual Sludge Report to the TCEQ by September 1 of each year.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to report 40% noncompliances to the TCEQ within the required notification period.		
Date:	08/31/2005 (490938)	CN600797393	
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 (490939)	CN600797393	
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 (490940)	CN600797393	
Self Report?	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	12/31/2005 (490942)	CN600797393	
Self Report?	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	02/28/2006 (490937)	CN600797393	
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:	03/31/2006 (505546)	CN600797393	
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:	04/30/2006 (505547)	CN600797393	
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:	05/31/2006 (527822)	CN600797393	
Self Report?	YES	Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)		
Description:	Failure to meet the limit for one or more permit parameter		
Date:	06/30/2008 (527823)	CN600797393	
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:	07/31/2006 (527824)	CN600797393	
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:	08/31/2006 (527825)	CN600797393	
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 (629611) CN600797393
 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: 11/30/2006 (629613) CN600797393
 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: 12/31/2006 (629615) CN600797393
 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: 01/31/2007 (629601) CN600797393
 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: 02/12/2007 (514499) CN600797393
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to report 40% noncompliances to the TCEQ within the required notification period.
 Date: 02/28/2007 (629602) CN600797393
 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: 03/31/2007 (629603) CN600797393
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 04/30/2007 (629604) CN600797393
 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: 05/31/2007 (629605) CN600797393
 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: 06/30/2007 (629606) CN600797393
 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: 07/31/2007 (629607) CN600797393
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 08/31/2007 (629608) CN600797393
 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: 02/29/2008 (695331) **CN600797393**
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: 03/31/2008 (716856) **CN600797393**
Self Report? YES **Classification:** Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter
Date: 04/30/2008 (716857) **CN600797393**
Self Report? YES **Classification:** Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter
Date: 05/31/2008 (716858) **CN600797393**
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: 10/01/2008 (704376) **CN600797393**
Self Report? NO **Classification:** Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Effluent Limitation and Monitoring Req. PERMIT
Description: Failure to discharge effluent in compliance with permitted effluent limitations.
Date: 11/30/2008 (755602) **CN600797393**
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 **CN600797393**
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 (772645) **CN600797393**
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: 02/11/2009 (759027) **CN600797393**
Self Report? NO **Classification:** Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)
Description: NON-RPT VIOS FOR MONIT PER OR PIPE
Self Report? NO **Classification:** Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)
Description: NON-RPT VIOS FOR MONIT PER OR PIPE
Self Report? NO **Classification:** Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)
Description: NON-RPT VIOS FOR MONIT PER OR PIPE
Date: 02/28/2009 (772646) **CN600797393**
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: 03/31/2009 (772647) **CN600797393**
Self Report? YES **Classification:** Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter
Date: 04/30/2009 **CN600797393**
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 **CN600797393**
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 PENELOPE
RN101523066

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2010-0092-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 Penelope ("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 system located approximately 2,000 feet southeast of the intersection of Farm-to-Market Roads 308 and 2114, adjacent to the north side of Farm-to-Market Road 2114, at the southeast edge of Penelope in Hill 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 19, 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 Ten Thousand One Hundred Ninty-Seven Dollars (\$10,197) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Two Thousand Thirty-Nine Dollars (\$2,039) 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. Eight Thousand One Hundred Fifty-Eight Dollars (\$8,158) shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP").
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 submitted the discharge monitoring reports ("DMRs") for the monitoring periods ending September 30, 2008 and October 31, 2008 on January 29, 2010.
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 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. WQ0013621001, Effluent Limitations and Monitoring Requirements No. 1, as documented in a record review conducted on October 14, 2009 and shown in the table below:

Effluent Parameters	BOD5 Daily Avg. Conc	BOD5 Single Grab	Total Suspended Solids Daily Avg. Conc
Month/Year	Limit = 30 mg/L	Limit = 100 mg/L	Limit = 90 mg/L
11/30/2008	c	c	154
12/31/2008	c	c	154
1/31/2009	42.7	500	203
2/28/2009	59	c	378
3/31/2009	37.3	c	275.5
4/30/2009	30.7	c	221
5/31/2009	c	c	175.5
BOD5 = biochemical oxygen demand 5-Day			
conc. = concentration			
avg. = average			
mg/L = milligrams per liter			
c = compliant			

- Failed to timely submit effluent monitoring results at the intervals specified in the permit or to include all required data in the DMR, in violation of 30 TEX. ADMIN. CODE §§ 305.125(17) and 319.1, and TPDES Permit No. WQ0013621001, Monitoring and Reporting Requirements No. 1. Specifically, the DMRs for the monitoring periods ending September 30, 2008 and October 31, 2008 were not submitted until January 29, 2010, and for the monitoring period ending May 31, 2009 the DMR failed to include the parameter data for 5-day biochemical oxygen demand single grab, as documented in a record review on October 14, 2009.

III. DENIALS

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

IV. ORDERING PROVISIONS

- 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 Penelope, Docket No. 2010-0092-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

- The City shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Eight Thousand One Hundred Fifty-Eight Dollars (\$8,158) of the assessed administrative penalty shall be offset with the condition that the City implement the SEP defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. It is further ordered that the City shall undertake the following technical requirements:
- a. Within 30 days after the effective date of the Agreed Order, submit a revised DMR for the monitoring period ending May 31, 2009 to include the parameter data for 5-day biochemical oxygen demand single grab;
 - b. Within 30 days after the effective date of the Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified monthly DMRs, in accordance with TPDES Permit No. WQ0013621001, Monitoring and Reporting Requirements No. 1;
 - c. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provisions 3.a. and 3.b. in accordance with Ordering Provision 3.d. below; and
 - d. 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. WQ0013621001, including specific corrective actions that were implemented at the City 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.

City of Penelope
DOCKET NO. 2010-0092-MWD-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Rollins
For the Executive Director

8/3/2010
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.

X *Ben Neal*
Signature

7-21-10
Date

X BEN NEAL
Name (Printed or typed)
Authorized Representative of
City of Penelope

Mayor
Title

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

Attachment A
Docket Number: 2010-0092-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Penelope
Penalty Amount: Eight Thousand One Hundred Fifty-Eight Dollars (\$8,158)
SEP Offset Amount: Eight Thousand One Hundred Fifty-Eight Dollars (\$8,158)
Type of SEP: Custom (pre-approved concept)
Location of SEP: Hill County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order for the Respondent to perform a Supplemental Environmental Project ("SEP"). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall hold a cleanup event to collect solid waste and remove and properly dispose of or recycle used tires throughout the city and surrounding areas, at no cost to the residents. The Respondent shall ensure that the event:

- occurs after normal work hours or on weekend days if respondent's personnel are used, or in the alternative, a contractor may be used during regular business hours;
- offers to the public a no-cost option to dispose of tires and solid waste;
- if advertised, that the event is advertised in a newspaper of large circulation in the geographic area and that the advertisement includes a statement that the project is being performed as a Supplemental Environmental Project as a result of an enforcement action brought by TCEQ

The Respondent shall utilize a contractor to haul and properly dispose of or recycle the collected tires and solid waste. At the Executive Director's discretion, the Respondent may receive SEP Offset Amount credit only for the direct cost of implementing the project. Specifically, the Respondent may receive SEP Offset Amount credit for costs of equipment, materials, and contract labor costs in accordance with TCEQ expenditure restrictions on the use of SEP funds. Credit for the use of the SEP Offset Amount shall be limited to costs that are actual, documented, reasonable, and necessary to performance of the SEP. The Respondent must competitively bid work for the project to ensure that costs are reasonable and customary. The Respondent may receive credit for the reasonable and customary costs of labor if its employees are used in implementing the SEP. The Respondent shall not receive credit for volunteer labor or equipment. The SEP Offset Amount will be used for the direct cost of the project and no portion of the SEP Offset Amount shall be spent on the Respondent's administrative costs. The Respondent shall also not receive credit for gratuities and/or inducements (food, refreshments, or other gifts) for volunteers.

The Respondent shall perform this project in accordance with all federal, state and local environmental laws and regulations. The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing for the proper disposal of used tires that can emit chemicals into the soil and water, as well as help rid the community of the dangers and health threats associated with mosquitoes that can carry West Nile virus. The cleanup will also help prevent release of harmful chemicals into the atmosphere from potential tire fires.

C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A. Respondent understands that this SEP may cost more than the Offset Amount to complete.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent shall begin implementation of the SEP. The Respondent shall perform the SEP in accordance with the schedule shown in the Performance Schedule Deliverable table below, and shall have completed the SEP in its entirety within one year following the effective date of this Agreed Order.

Days from Effective Order Date	Percentage of Project to Be Completed	Performance Schedule Deliverable
30	Begin	Notice of Commencement describing actions taken to begin project
90	1/4	Receive approval from TCEQ and Bid Project
120	1/2	Receive approval from TCEQ for advertisement and publish
180	3/4	Provide notice of event date to TCEQ
365	Completion	Final completion of SEP with Final Report to be provided within 60 days of completion date, as described in Section 3.B., below.

3. Reporting

A. Progress Reports

The Respondent shall submit Progress Reports to the TCEQ SEP Coordinator according to the schedule provided in the Progress Report Deliverable table below.

Days from Effective Order Date	Progress Report Deliverable
30	Notice of Commencement describing actions being taken to begin project
90	Second Progress Report to provide report of actions taken to implement project.
120	Third Progress Report to provide report of actions taken to implement project.
210	Fourth Progress Report to provide report of actions taken to implement project.
280	Fifth Progress Report to provide report of actions taken to implement project.
365	Notice of SEP Completion, with Final Report to follow within 60 days of completion of project.

B. Final Report

Within 60 days after completion of the project, the Respondent shall submit a Final Report to the TCEQ which will include:

1. A summary total of the amount of costs incurred;
2. An itemized list of expenditures and costs incurred.
 - a. Copies of receipts, checks, invoices, and other verifying documentation must be included with the Final Report; and
 - b. If Respondent requests to receive credit for use of its own employees, time card records certified by a supervisor and confirmed by respondent's Payroll section will be required.
3. Copies of the following:
 - a. Proof of advertisement of the event (the advertisement must include the statement that the SEP was performed as a result of a TCEQ enforcement action); and
 - b. Proof of publication of invitation for and selection of competitive bids for the project;
4. A statement of the quantifiable environmental benefits. The Respondent must quantify the environmental benefit of the project;
5. Map showing specific locations of the collection site (and any cleanup sites, if applicable);
6. Photographs of the project showing the collected tires and solid waste;
7. Manifests sufficient to show proof of proper disposal and/or recycling of the tires and solid waste. Documentation must be provided to show proof of proper disposal of the collected tires and solid waste;
8. Any additional information the Respondent believes will, or that is requested by TCEQ to demonstrate compliance with this Attachment A.

4. Additional Information and Access

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

5. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

6. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

7. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program. Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

8. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other orders negotiated with the TCEQ or any other agency of the state or federal government.