

Executive Summary – Enforcement Matter – Case No. 41647

City of Byers

RN101720415

Docket No. 2011-0743-MWD-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

City of Byers WWTF, located approximately 400 feet east of Byers City Lake and approximately 4,000 feet northwest of the intersection of Farm-to-Market Road 171 and State Highway 79, Byers, Clay County

Type of Operation:

Wastewater treatment facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: August 19, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$7,285

Amount Deferred for Expedited Settlement: \$1,457

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$5,828

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41647

City of Byers

RN101720415

Docket No. 2011-0743-MWD-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: April 21, 2011

Date(s) of NOE(s): May 5, 2011

Violation Information

1. Failed to comply with the permitted effluent limitations for total suspended solids and chlorine [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010890001, Effluent Limitations and Monitoring Requirements No. 1].
2. Failed to analyze samples for *Escherichia coli* for the quarterly monitoring period ending November 30, 2010 [30 TEX. ADMIN CODE §§ 305.125(1) and 319.5(b), and TPDES Permit No. WQ0010890001, Monitoring and Reporting Requirements No. 1].
3. Failed to timely submit the annual sludge report for the monitoring period ending July 31, 2010, by September 1, 2010 [30 TEX. ADMIN CODE § 305.125(1) and (17) and TPDES Permit No. WQ0010890001, Sludge Provisions].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:

- a. By January 12, 2011, began sampling and conducting analyses for *Escherichia coli*; and
- b. By May 20, 2011, submitted the annual sludge report for the monitoring period ending July 31, 2010.

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days, update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including sampling and the timely submittal of signed and certified quarterly discharge monitoring reports ("DMRs") and annual sludge reports;
- b. Within 45 days, submit written certification of compliance with Ordering Provision a.; and
- c. Within 90 days, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0010890001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most

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current self-reported DMRs, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: JR Cao, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2543; Debra Barber, Enforcement Division, MC 219, (512) 239-0412

TCEQ SEP Coordinator: N/A

Respondent: The Honorable Robert Lawrence, Mayor, City of Byers, P.O. Box 265, Byers, Texas 76357

Respondent's Attorney: N/A





Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	9-May-2011	Screening	12-May-2011	EPA Due	
	PCW	12-May-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Byers				
Reg. Ent. Ref. No.	RN101720415				
Facility/Site Region	3-Abilene	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	41647	No. of Violations	3
Docket No.	2011-0743-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	JR Cao
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$3,100**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **135.0%** Enhancement **Subtotals 2, 3, & 7** **\$4,185**

Notes: Enhancement for two NOVs with same/similar violations, 21 months of self-reported effluent violations, and one agreed order with denial of liability.

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 **\$973**
 Approx. Cost of Compliance **\$10,330**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$7,285**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$7,285**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$7,285**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$1,457**

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 **\$5,828**

Screening Date 12-May-2011

Docket No. 2011-0743-MWD-E

PCW

Respondent City of Byers

Policy Revision 2 (September 2002)

Case ID No. 41647

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101720415

Media [Statute] Water Quality

Enf. Coordinator JR Cao

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	23	115%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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) 135%

>> **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

Enhancement for two NOVs with same/similar violations, 21 months of self-reported effluent violations, and one agreed order with denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 135%

Screening Date 12-May-2011

Docket No. 2011-0743-MWD-E

PCW

Respondent City of Byers

Policy Revision 2 (September 2002)

Case ID No. 41647

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101720415

Media [Statute] Water Quality

Enf. Coordinator JR Cao

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010890001, Effluent Limitations and Monitoring Requirements No. 1

Violation Description Failed to comply with permitted effluent limitations, as documented in a record review conducted on April 21, 2011, and shown in the attached violation table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	10%
Potential				

>> 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 2 153 Number of violation days

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

Violation Base Penalty \$2,000

Two 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 \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$947

Violation Final Penalty Total \$4,700

This violation Final Assessed Penalty (adjusted for limits) \$4,700

Economic Benefit Worksheet

Respondent City of Byers
Case ID No. 41647
Reg. Ent. Reference No. RN101720415
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

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$10,000	30-Sep-2010	6-Feb-2012	1.35	\$45	\$902	\$947
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated costs to evaluate the cause of non-compliance and to implement corrective actions. Date required is the first date of non-compliance. 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

\$947

Screening Date 12-May-2011

Docket No. 2011-0743-MWD-E

PCW

Respondent City of Byers

Policy Revision 2 (September 2002)

Case ID No. 41647

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101720415

Media [Statute] Water Quality

Enf. Coordinator JR Cao

Violation Number 2

Rule Cite(s) 30 Tex. Admin Code §§ 305.125(1) and 319.5(b), and TPDES Permit No. WQ0010890001, Monitoring and Reporting Requirements No. 1

Violation Description Failed to analyze samples for Eschericia coli for the quarterly monitoring period ending November 30, 2010, as documented in a record review conducted on April 21, 2011.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would 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 1

143 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

One quarterly event is 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 \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$8

Violation Final Penalty Total \$2,350

This violation Final Assessed Penalty (adjusted for limits) \$2,350

Economic Benefit Worksheet

Respondent City of Byers
Case ID No. 41647
Req. Ent. Reference No. RN101720415
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
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See economic benefit for violation no. 3.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$30	1-Sep-2010	30-Nov-2010	0.25	\$0	\$7	\$8
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

Actual cost to perform the sample analysis for the quarterly monitoring period ending November 30, 2010.

Approx. Cost of Compliance

\$30

TOTAL

\$8

Screening Date 12-May-2011

Docket No. 2011-0743-MWD-E

PCW

Respondent City of Byers

Policy Revision 2 (September 2002)

Case ID No. 41647

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101720415

Media [Statute] Water Quality

Enf. Coordinator JR Cao

Violation Number 3

Rule Cite(s) 30 Tex. Admin Code § 305.125(1) and (17) and TPDES Permit No. WQ0010890001, Sludge Provisions

Violation Description

Failed to timely submit the annual sludge report for the monitoring period ending July 31, 2010, by September 1, 2010, as documented during a record review conducted on April 21, 2011.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
			x

Percent 1%

Matrix Notes

At least 70% of the permit requirement was met.

Adjustment \$9,900

\$100

Violation Events

Number of Violation Events 1

242 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 \$18

Violation Final Penalty Total \$235

This violation Final Assessed Penalty (adjusted for limits) \$235

Economic Benefit Worksheet

Respondent City of Byers
Case ID No. 41647
Reg. Ent. Reference No. RN101720415
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
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	\$50	1-Sep-2010	20-May-2011	0.72	\$2	n/a	\$2
Training/Sampling	\$250	1-Sep-2010	8-Dec-2011	1.27	\$16	n/a	\$16
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost to submit the annual sludge report and the cost of updating procedures and training Facility personnel to ensure that sampling is performed and all reports are submitted timely and complete. Date required is the date the annual sludge report was due. Final dates are the date the report was submitted, and the date training is expected to be completed, respectively.

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

\$300

TOTAL

\$18

EFFLUENT VIOLATION TABLE

City of Byers
TPDES Permit No. WQ0010890001
Docket No. 2011-0743-MWD-E

	Months				
	September 2010	October 2010	November 2010	December 2010	January 2011
TSS daily avg. loading Limit = 7.2 lbs/day	16.10	c	c	c	11.43
TSS daily avg. conc. Limit = 20 mg/L	20.11	c	c	c	c
Chlorine monthly min. Limit = 1 mg/L	c	0.5	0.6	c	0.8
Chlorine monthly max. Limit = 4 mg/L	c	4.6	4.7	5	c

avg. = average
 c = compliant
 conc. = concentration
 lbs/day = pounds per day

max. = maximum
 min. = minimum
 mg/L = milligrams per liter
 TSS = Total Suspended Solids

Compliance History

Customer/Respondent/Owner-Operator: CN600674782 City of Byers Classification: AVERAGE Rating: 2.84
Regulated Entity: RN101720415 CITY OF BYERS Classification: AVERAGE Site Rating: 2.51

ID Number(s): WASTEWATER PERMIT WQ0010890001
WASTEWATER EPA ID TX0075442
WASTEWATER LICENSING LICENSE WQ0010890001

Location: located approximately 400 feet east of Byers City Lake in Byers and approximately 4,000 feet northwest of the intersection of Farm-to-Market Road 171 and State Highway 79 in Clay County, Texas

TCEQ Region: REGION 03 - ABILENE

Date Compliance History Prepared: May 12, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: May 12, 2006 to May 12, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: JR Cao Phone: (512) 239-2543

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: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
- Effective Date: 02/08/2009 ADMINORDER 2008-1199-MWD-E
- Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Rqmt Prov: Effluent Limits PERMIT
Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.
- Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(17)
Rqmt Prov: Sludge Reporting Requirements PERMIT
Description: Failure to submit sludge monitoring results at the intervals specified in the permit as documented by a TCEQ record review.
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

3	08/14/2006	(525337)	33	12/17/2008	(730306)
4	09/18/2006	(525338)	34	02/17/2009	(753516)
5	10/10/2006	(550060)	35	01/12/2009	(753517)
6	11/08/2006	(550061)	36	06/30/2009	(760175)
7	02/12/2007	(584983)	37	03/12/2009	(770983)
8	03/16/2007	(584984)	38	04/09/2009	(770984)
9	04/12/2007	(584985)	39	05/13/2009	(770985)
10	05/10/2007	(584986)	40	11/10/2009	(778459)
11	06/11/2007	(584987)	41	02/26/2010	(793613)
12	01/10/2007	(584988)	42	02/16/2010	(812807)
13	07/19/2007	(604412)	43	07/08/2009	(812808)
14	08/15/2007	(604413)	44	07/06/2009	(812809)
15	09/10/2007	(604414)	45	08/10/2009	(812810)
16	10/11/2007	(623452)	46	09/08/2009	(812811)
17	11/15/2007	(623453)	47	10/15/2009	(812812)
18	12/10/2007	(623454)	48	11/09/2009	(812813)
19	07/02/2008	(671725)	49	12/09/2009	(812814)
20	02/19/2008	(674769)	50	01/14/2010	(812815)
21	01/07/2008	(674770)	51	03/17/2010	(833716)
22	03/10/2008	(693092)	52	04/12/2010	(833717)
23	04/09/2008	(693093)	53	05/10/2010	(833718)
24	05/12/2008	(693094)	54	06/11/2010	(847143)
25	06/16/2008	(714323)	55	10/15/2010	(882498)
26	07/07/2008	(714324)	56	11/15/2010	(888936)
27	08/11/2008	(714325)	57	12/10/2010	(897285)
28	09/08/2008	(714326)	58	03/09/2011	(900671)
29	02/02/2009	(721863)	59	01/10/2011	(903188)
30	09/30/2008	(730303)	60	02/22/2011	(910110)
31	10/06/2008	(730304)	61	05/05/2011	(913929)
32	11/08/2008	(730305)			

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

Date: 05/31/2007 (584987) CN600674782
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: 06/30/2007 (604412) CN600674782
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 (604413) CN600674782
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: 09/30/2007 (623452) CN600674782
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: 10/31/2007 (623453) CN600674782
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: 12/31/2007 (674770) CN600674782
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: 01/31/2008 (674769) CN600674782
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 (693092) CN600674782
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 (693093) CN600674782
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date: 07/31/2008 (714325) CN600674782
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: 09/01/2008 (730303) CN600674782
 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: 09/30/2008 (730304) CN600674782
 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: 10/31/2008 (730305) CN600674782
 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 (753517) CN600674782
 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 (753516) CN600674782
 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: 02/02/2009 (721863) CN600674782
 Self Report? NO Classification: Major
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 305, SubChapter F 305.125(5)
 WQ0010890001 PERMIT
 Description: Failure to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 317 317.4(a)(8)
 30 TAC Chapter 317 317.7(i)
 WQ0010890001 PERMIT
 Description: Failure to provide an annual certification of the reduced pressure backflow assembly (RPBA) on the public water supply line located at the wastewater treatment plant.
 Self Report? NO Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
 2D TWC Chapter 26, SubChapter A 26.121(a)(3)
 2D TWC Chapter 26, SubChapter A 26.121(b)
 2D TWC Chapter 26, SubChapter A 26.121(c)
 2D TWC Chapter 26, SubChapter A 26.121(d)
 2D TWC Chapter 26, SubChapter A 26.121(e)
 30 TAC Chapter 305, SubChapter F 305.125(4)
 30 TAC Chapter 305, SubChapter F 305.125(5)
 TWC Chapter 26 26.121
 TWC Chapter 26 26.121(a)(2)
 WQ0010890001 PERMIT
 Description: Failure to prevent the unauthorized discharge of wastewater into or adjacent to

any water in the state.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
WQ0010890001 PERMIT

Description: Failure to meet permit effluent limits for BOD based upon a record review of DMR data.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.7(c)
WQ0010890001 PERMIT

Description: Failure to accurately report effluent data on the discharge monitoring reports.

Date: 01/31/2010 (812807) CN600674782

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: 02/26/2010 (793613) CN600674782

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 317 317.4(a)(8)
30 TAC Chapter 317 317.7(i)
WQ0010890001 PERMIT

Description: Failure to provide an annual certification of the reduced pressure backflow assembly (RPBA) on the public water supply line located at the wastewater treatment plant.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(11)(B)
30 TAC Chapter 305, SubChapter F 305.125(11)(C)
WQ0010890001 PERMIT

Description: Failure to submit a complete annual sludge report (September 2008-August 2009) by September 1st of each year.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
WQ0010890001 PERMIT

Description: Failure to properly operate and maintain the oxidation ditch.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
WQ0010890001 PERMIT

Description: Failure to calibrate the effluent flowmeter on an annual basis.

Date: 09/30/2010 (882498) CN600674782

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: 10/31/2010 (888936) CN600674782

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: 11/30/2010 (897285) CN600674782

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: 12/31/2010 (903188) CN600674782

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: 01/31/2011 (910110)

CN600674782

Self Report? YES

Classification: Moderate

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

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

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF BYERS
RN101720415**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2011-0743-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 Byers ("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 facility located approximately 400 feet east of Byers City Lake and approximately 4,000 feet northwest of the intersection of Farm-to-Market Road 171 and State Highway 79 in Byers, Clay 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 May 10, 2011.
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 Seven Thousand Two Hundred Eighty-Five Dollars (\$7,285) is assessed by the Commission in settlement of the violations alleged in

- Section II ("Allegations"). The Respondent has paid Five Thousand Eight Hundred Twenty-Eight Dollars (\$5,828) of the administrative penalty and One Thousand Four Hundred Fifty-Seven Dollars (\$1,457) 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 recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. By January 12, 2011, began sampling and conducting analyses for *Escherichia coli*; and
 - b. By May 20, 2011, submitted the annual sludge report for the monitoring period ending July 31, 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 Respondent 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 Respondent is alleged to have:

1. Failed to comply with the permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010890001, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on April 21, 2011, and shown in the following violation table:

EFFLUENT VIOLATION TABLE					
	Months				
	September 2010	October 2010	November 2010	December 2010	January 2011
TSS daily avg. loading Limit = 7.2 lbs/day	16.10	c	c	c	11.43
TSS daily avg. conc. Limit = 20 mg/L	20.11	c	c	c	c
Chlorine monthly min. Limit = 1 mg/L	c	0.5	0.6	c	0.8
Chlorine monthly max. Limit = 4 mg/L	c	4.6	4.7	5	c

avg. = average

c = compliant

conc. = concentration

lbs/day = pounds per day

max. = maximum

min. = minimum

mg/L = milligrams per liter

TSS = Total Suspended Solids

- Failed to analyze samples for *Escherichia coli* for the quarterly monitoring period ending November 30, 2010, in violation of 30 TEX. ADMIN CODE §§ 305.125(1) and 319.5(b), and TPDES Permit No. WQ0010890001, Monitoring and Reporting Requirements No. 1, as documented during a record review conducted on April 21, 2011.
- Failed to timely submit the annual sludge report for the monitoring period ending July 31, 2010, by September 1, 2010, in violation of 30 TEX. ADMIN CODE § 305.125(1) and (17) and TPDES Permit No. WQ0010890001, Sludge Provisions, as documented during a record review conducted on April 21, 2011.

III. DENIALS

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

IV. ORDERING PROVISIONS

- 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 Byers, Docket No. 2011-0743-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 undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including sampling and the timely submittal of signed and certified quarterly discharge monitoring reports (DMRs) and annual sludge reports, in accordance with TPDES Permit No. WQ0010890001 Monitoring and Reporting Requirements No. 1 and Sludge Provisions;
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a, in accordance with Ordering Provision No. 2.d below;
 - c. 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. WQ0010890001, including specific corrective actions that were implemented at the Facility 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. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the permitted effluent limitations, in accordance with Ordering Provision No. 2.d below; and
 - d. The certification required by Ordering Provision Nos. 2.b and 2.c shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager
Abilene Regional Office
Texas Commission on Environmental Quality
1977 Industrial Boulevard
Abilene, Texas 79602-7833

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 separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature

could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

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

Paul A. Azel
For the Executive Director

8/30/11
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.

Robert Lawrence
Signature

7/15/11
Date

Robert Lawrence
Name (Printed or typed)
Authorized Representative of
City of Byers

Mayor
Title

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