EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-1214-IWD-E **TCEQ ID:** RN100214493 **CASE NO.:** 40106
RESPONDENT NAME: Universal Forest Products Texas LLC

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
X WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: UFP-New Waverly, located on the east side of United States Highway 75, approximately three miles north of New Waverly, Walker County

TYPE OF OPERATION: Lumber remanufacturing facility

SMALL BUSINESS: ___ Yes _X_ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on December 27, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. Samuel Short, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-5363; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
Respondent: Mr. Matthew J. Missad, Secretary, Universal Forest Products Texas LLC, 2801 East Beltline Avenue Northeast, Grand Rapids, Michigan 49525
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint __ Routine __ Enforcement Follow-up X Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** June 30, 2010 **Date of NOV/NOE Relating to this Case:** July 21, 2010 (NOE) **Background Facts:** This was a records review. **WATER** Failed to comply with permitted effluent limits for total suspended solids and escherichia coli [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001905000, Effluent Limitations and Monitoring Requirements No. 1].	**Total Assessed:** $22,200 **Total Deferred:** $4,440 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $17,760 **Compliance History Classifications:** Person/CN - Average Site/RN - Average **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Within 30 days after the effective date of this Agreed Order, conduct an evaluation of the Facility and the associated collection system to determine the cause of and necessary corrective actions required to prevent future effluent violations. Based upon the evaluation, develop and implement a plan and schedule for the completion of necessary corrective actions not to exceed 180 days; and b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision a. as described in Ordering Provision d.; c. Within 225 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations and of completion of the corrective actions identified in Ordering Provision a.; and d. The certification shall include specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations and detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the permitted effluent limitations.

Additional ID No(s).: WQ0001905000

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision October 30, 2008*

TCEQ

DATES						
Assigned	26-Jul-2010					
PCW	2-Aug-2010	**Screening**	28-Jul-2010	**EPA Due**		

RESPONDENT/FACILITY INFORMATION

Respondent	Universal Forest Products Texas LLC		
Reg. Ent. Ref. No.	RN100214493		
Facility/Site Region	12-Houston	**Major/Minor Source**	Minor

CASE INFORMATION

Enf./Case ID No.	40106	**No. of Violations**	1
Docket No.	2010-1214-IWD-E	**Order Type**	1660
Media Program(s)	Water Quality	**Government/Non-Profit**	No
Multi-Media		**Enf. Coordinator**	Samuel Short
		EC's Team	Enforcement Team 3

Admin. Penalty $ Limit Minimum $0 Maximum $10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1*: $10,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 122.0% Enhancement — *Subtotals 2, 3, & 7*: $12,200

Notes: Enhancement for 19 months of self-reported effluent violations, one NOV for the same/similar violations, one NOV for dissimilar violations, and one Agreed Order with denial of liability language within the last five years.

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: $397
Approx. Cost of Compliance: $5,000
**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal*: $22,200

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount: $22,200

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty*: $22,200

DEFERRAL — 20.0% Reduction — *Adjustment*: -$4,440

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY: $17,760

Screening Date 28-Jul-2010 **Docket No.** 2010-1214-IWD-E **PCW**

Respondent Universal Forest Products Texas LLC

Policy Revision 2 (September 2002)

Case ID No. 40106

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100214493

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	20	100%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 122%

>> 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 19 months of self-reported effluent violations, one NOV for the same/similar violations, one NOV for dissimilar violations, and one Agreed Order with denial of liability language within the last five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 122%

Screening Date 28-Jul-2010 **Docket No.** 2010-1214-IWD-E **PCW**

Respondent Universal Forest Products Texas LLC *Policy Revision 2 (September 2002)*

Case ID No. 40106 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN100214493

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001905000, Effluent Limitations and Monitoring Requirements No. 1

Violation Description Failed to comply with permitted effluent limits, as documented during a record review conducted on June 30, 2010 and shown in the attached table.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR	Harm		
Release	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events: 4 — 123 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $10,000

Four monthly 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 $10,000

Economic Benefit (EB) for this violation

Estimated EB Amount $397

Statutory Limit Test

Violation Final Penalty Total $22,200

This violation Final Assessed Penalty (adjusted for limits) $22,200

Economic Benefit Worksheet

Respondent Universal Forest Products Texas LLC
Case ID No. 40106
Reg. Ent. Reference No. RN100214493
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or $						
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)	$5,000	30-Sep-2009	2-May-2011	1.59	$397	n/a	$397
Notes for DELAYED costs	Estimated cost to evaluate the causes of the effluent violations and to implement necessary rehabilitation to the wastewater treatment system. Date required is the first date of non-compliance. The final date is the expected date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $5,000

TOTAL $397

Effluent Limit Violation Table

table rev.

Respondent	Universal Forest Products Texas LLC
ID Number(s)	TPDES Permit No. WQ0001905000; Case No. 40106
Docket Number	2010-1214-IWD-E
Enf. Coordinator	Samuel Short
Corresponds to Violation Number:	1

	EFFLUENT PARAMETER													
	Permit Limit													
	TSS Daily Max. Conc.	E. coli Daily Max.												
Month/Year	45 mg/L	400 CFU/100 ml												
9/30/2009	c	770												
12/31/2009	c	727												
1/31/2010	64.3	770												
3/31/2010	89	1120												

Name	Abbreviation
milligrams per liter	mg/L
Escherichia coli	E. coli
Colonies per 100 milliliter	CFU/100 ml
maximum	Max.

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603536301	UNIVERSAL FOREST PRODUCTS TEXAS LLC	Classification: AVERAGE	Rating: 1.67
Regulated Entity:	RN100214493	UFP-NEW WAVERLY	Classification: AVERAGE	Site Rating: 1.67

ID Number(s):

WASTEWATER	PERMIT	WQ0001905000
WASTEWATER	EPA ID	TX0028169
AIR NEW SOURCE PERMITS	PERMIT	16669
AIR NEW SOURCE PERMITS	PERMIT	11988
AIR NEW SOURCE PERMITS	REGISTRATION	31891
AIR NEW SOURCE PERMITS	REGISTRATION	39446
AIR NEW SOURCE PERMITS	REGISTRATION	41245
AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	WA0024A
AIR NEW SOURCE PERMITS	AFS NUM	4847100013
AIR NEW SOURCE PERMITS	REGISTRATION	76685
AIR NEW SOURCE PERMITS	EPA ID	PSDTX830
WASTEWATER LICENSING	LICENSE	WQ0001905000
STORMWATER	PERMIT	TXR05R215
AIR EMISSIONS INVENTORY	ACCOUNT NUMBER	WA0024A

Location: LOCATED ON THE EAST SIDE OF UNITED STATES HIGHWAY 75, APPROXIMATELY THREE MILES NORTH OF NEW WAVERLY, WALKER COUNTY, TEXAS

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: August 02, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 02, 2005 to August 02, 2010

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

Name: Samuel Short Phone: (512) 239-5363

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 judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 05/22/2008 ADMINORDER 2007-1773-IWD-E

Classification: Moderate

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

Rqmt Prov: Effluent Limits PERMIT
Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.

Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 319, SubChapter A 319.5(b)

Rqmt Prov: EL & MR No. 1 PERMIT
Description: Failure to collect and analyze samples for each parameter at the minimum frequency specified in the permit.

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

N/A

C. Chronic excessive emissions events.

N/A

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

1 08/29/2005 (442445)

2	10/06/2005	(471532)
3	10/24/2005	(471533)
4	11/16/2005	(471534)
5	12/22/2005	(471535)
6	01/24/2006	(471536)
7	03/03/2006	(471530)
8	03/15/2006	(471531)
9	04/18/2006	(500167)
10	06/01/2006	(500168)
11	06/21/2006	(500169)
12	07/21/2006	(522275)
13	08/24/2006	(522276)
14	09/29/2006	(522277)
15	11/27/2006	(546957)
16	11/27/2006	(546958)
17	02/05/2007	(579346)
18	02/05/2007	(579347)
19	03/05/2007	(579342)
20	03/30/2007	(602767)
21	04/23/2007	(579343)
22	05/21/2007	(579344)
23	05/22/2007	(555713)
24	06/20/2007	(579345)
25	07/18/2007	(602768)
26	09/24/2007	(602769)
27	10/01/2007	(621109)
28	10/19/2007	(621110)
29	10/22/2007	(574347)
30	11/26/2007	(621111)
31	12/27/2007	(621112)
32	01/24/2008	(621113)
33	03/21/2008	(673205)
34	03/27/2008	(673204)
35	04/28/2008	(691358)
36	05/27/2008	(691359)
37	07/09/2008	(712279)
38	07/17/2008	(712280)
39	08/22/2008	(712281)
40	08/31/2008	(728586)
41	10/03/2008	(728587)
42	10/20/2008	(712282)
43	12/03/2008	(769455)
44	12/22/2008	(728588)
45	01/15/2009	(751670)
46	02/17/2009	(751669)
47	03/17/2009	(769452)
48	05/04/2009	(769453)
49	05/18/2009	(707220)
50	05/26/2009	(769454)
51	06/24/2009	(808012)
52	07/15/2009	(808013)
53	08/19/2009	(808014)
54	09/28/2009	(808015)
55	10/20/2009	(808016)
56	11/30/2009	(808017)
57	12/21/2009	(808018)
58	01/28/2010	(808019)
59	02/22/2010	(808011)
60	03/26/2010	(832103)
61	04/15/2010	(832104)
62	05/11/2010	(797398)
63	05/19/2010	(832105)
64	07/22/2010	(829424)

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

Date: 08/31/2005 (471532) CN603536301
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 (471533) CN603536301
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 (471536) CN603536301
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 (522276) CN603536301
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 (522277) CN603536301
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: 10/31/2006 (546958) CN603536301
Self Report? YES Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
TWC Chapter 26 26.121(a)
Description: Failure to meet the limit for one or more permit parameter

Date: 11/30/2006 (579346) CN603536301
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: 12/31/2006 (579347) CN603536301
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 (579344) CN603536301
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: 05/22/2007 (555713) CN603536301
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)
30 TAC Chapter 319, SubChapter A 319.7(c)
Description: Failure to provide a certified sample refrigerator thermometer and failure to provide adequate pH buffers.

Date: 05/31/2007 (579345) CN603536301
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 (602768) CN603536301
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 (602769) CN603536301
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 (621111) CN603536301
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 (673205) CN603536301
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 (712279) CN603536301
Self Report? YES Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet the limit for one or more permit parameter

Date 09/30/2009 (808016) CN603536301
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 12/31/2009 (808019) CN603536301
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 01/31/2010 (808011) CN603536301
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 03/31/2010 (832104) CN603536301
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 05/11/2010 (797398) CN603536301
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Other Requirements, No. 3 PERMIT
Description: Failure to maintain compliance with the permitted effluent limits for total chlorine residual following the domestic wastewater treatment plant.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
ELMR, No. 1 PERMIT
Description: Failure to maintain compliance with the permitted effluent limits for E. coli bacteria and total suspended solids (TSS).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 319, SubChapter A 319.5(a)
Other Requirements, No. 3 PERMIT
Description: Failure to monitor for biochemical oxygen demand (BOD) and total suspended solids (TSS) following the domestic wastewater treatment plant (WWTP) and prior to mixing with any other waters.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.5(b)
Description: Failure to sample for biochemical oxygen demand (BOD), total suspended solids (TSS), oil and grease (O&G), and E. coli bacteria at Outfall 001 in January 2009.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.11
Description: Failure to provide a National Institute of Standards and Technology (NIST) traceable thermometer for the sample storage refrigerator.

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 UNIVERSAL FOREST PRODUCTS TEXAS LLC RN100214493	**§ § § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2010-1214-IWD-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 Universal Forest Products Texas LLC ("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 lumber remanufacturing facility with an associated wastewater treatment facility located on the east side of United States Highway 75, approximately three miles north of New Waverly, Walker County, Texas (the "Facility").

2. The Respondent has discharged industrial 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 July 26, 2010.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Twenty-Two Thousand Two Hundred Dollars ($22,200) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seventeen Thousand Seven Hundred Sixty Dollars ($17,760) of the administrative penalty and Four Thousand Four Hundred Forty Dollars ($4,440) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to comply with permitted effluent limits, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0001905000, Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on June 30, 2010, and as shown in the table below:

	EFFLUENT PARAMETER ***Permit Limit***	
	TSS Daily Max. Conc.	E. coli Daily Max.
Month/Year	45 mg/L	400 CFU/100 ml
9/30/2009	c	770
12/31/2009	c	727
1/31/2010	64.3	770
3/31/2010	89	1120

Name	Abbreviation
milligrams per liter	mg/L
Escherichia coli	E. coli
Colonies per 100 milliliter	CFU/100 ml
maximum	Max.
concentration	Conc.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Universal Forest Products Texas LLC, Docket No. 2010-1214-IWD-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, conduct an evaluation of the Facility and the associated collection system to determine the cause of and

necessary corrective actions required to prevent future effluent violations. Based upon the evaluation, develop and implement a plan and schedule for the completion of necessary corrective actions not to exceed 180 days; and

b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.a as described in Ordering Provision No. 2.d;

c. Within 225 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations and of completion of the corrective actions identified in Ordering Provision No. 2.a, and as described in ordering provision 2.d below; and

d. The certification shall include specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations and detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the permitted effluent limitations. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon the 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

_____ _____
For the Executive Director Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

_____ _____
Signature Date

_____ _____
Name (Printed or typed) Title
Authorized Representative of
Universal Forest Products Texas LLC

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.