EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-0075-MWD-E **TCEQ ID:** RN101920031 **CASE NO.:** 38987

RESPONDENT NAME: City of Hitchcock

ORDER TYPE:		
__1660 AGREED ORDER	X 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: City of Hitchcock, located approximately one mile south of the intersection of State Highway 6 and Farm-to-Market Road 519, Galveston County

TYPE OF OPERATION: Domestic wastewater treatment system

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 January 10, 2011. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. Harvey Wilson, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-0321; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
Respondent: The Honorable Anthony Matranga, Mayor, City of Hitchcock, 7423 Highway 6, Hitchcock, Texas 77563
Respondent's Attorney: Not represented by counsel on this enforcement matter

RESPONDENT NAME: City of Hitchcock
DOCKET NO.: 2010-0075-MWD-E

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:** September 30, 2009 **Date of NOV/NOE Relating to this Case:** January 8, 2010 (NOE) **Background Facts:** This was a records review. **WATER** Failed to comply with permitted effluent limits for ammonia nitrogen and total mercury [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010690001 Effluent Limitations and Monitoring Requirements No. 1].	**Total Assessed:** $59,075 **Total Deferred:** $0 __Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $1,640 (remaining $57,435 due in 35 monthly payments of $1,641 each) **Compliance History Classifications:** Person/CN - Average Site/RN - Average **Major Source:** X Yes __ No **Applicable Penalty Policy:** September 2002 **Findings Orders Justification:** Human health or the environment has been exposed to pollutants which exceed levels that are protective.	**Ordering Provisions:** It is further ordered that the Respondent shall, within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0010690001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.

Additional ID No(s).: WQ0010690001

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES					
Assigned	11-Jan-2010				
PCW	21-Jan-2010	Screening	13-Jan-2010	EPA Due	5-Mar-2010

RESPONDENT/FACILITY INFORMATION

Respondent	City of Hitchcock		
Reg. Ent. Ref. No.	RN101920031		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	38987	No. of Violations	2
Docket No.	2010-0075-MWD-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Harvey Wilson
		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* $42,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 44.0% Enhancement — *Subtotals 2, 3, & 7* $18,700

Notes: An enhancement is recommended for seven self-reported months of effluent violations, one NOV for a similar violation, and two NOVs for non-similar violations.

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

Notes: The City 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 $128
Approx. Cost of Compliance $1,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $61,200

OTHER FACTORS AS JUSTICE MAY REQUIRE — -3.5% — *Adjustment* -$2,125

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended reduction to prevent double-enhancement of the penalty amount for the same violations that were self-reported.

Final Penalty Amount $59,075

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $59,075

DEFERRAL — 0.0% Reduction — *Adjustment* $0

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

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY $59,075

Screening Date 13-Jan-2010 **Docket No.** 2010-0075-MWD-E **PCW**

Respondent City of Hitchcock

Case ID No. 38987

Reg. Ent. Reference No. RN101920031

Media [Statute] Water Quality

Enf. Coordinator Harvey Wilson

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

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*)	8	40%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of 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) 44%

>> 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 seven self-reported months of effluent violations, one NOV for a similar violation, and two NOVs for non-similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 44%

Screening Date	13-Jan-2010	**Docket No.** 2010-0075-MWD-E	**PCW**
Respondent	City of Hitchcock		*Policy Revision 2 (September 2002)*
Case ID No.	38987		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN101920031		
Media [Statute]	Water Quality		
Enf. Coordinator	Harvey Wilson		

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. WQ0010690001 Effluent Limitations and Monitoring Requirements No. 1

Violation Description Failed to comply with permit effluent limits as depicted on the attached table.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: 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 insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment $7,500

$2,500

Violation Events

Number of Violation Events: 1 — 31 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $2,500

One quarterly event is recommended for the quarter containing the month of December 2008.

Good Faith Efforts to Comply

0.0% Reduction — $0

	Before NOV	NOV to EDPRP/Settlement
Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal $2,500

Economic Benefit (EB) for this violation

Estimated EB Amount $128

Statutory Limit Test

Violation Final Penalty Total $3,475

This violation Final Assessed Penalty (adjusted for limits) $3,475

Economic Benefit Worksheet

Respondent City of Hitchcock
Case ID No. 38987
Req. Ent. Reference No. RN101920031
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment	$1,000	31-Dec-2008	31-Oct-2010	1.83	$6	$122	$128
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	The estimated cost of repairing the diffusers in the aeration basin. Date Required is the date the non-compliance was documented. Final Date is the estimated date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance $1,000

TOTAL $128

Screening Date	13-Jan-2010	**Docket No.** 2010-0075-MWD-E	**PCW**
Respondent	City of Hitchcock		*Policy Revision 2 (September 2002)*
Case ID No.	38987		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN101920031		
Media [Statute]	Water Quality		
Enf. Coordinator	Harvey Wilson		

Violation Number 2

Rule Cite(s) Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0010690001 Effluent Limitations and Monitoring Requirements No. 1

Violation Description Failed to comply with permit effluent limits as depicted on the attached table.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual	x		
Potential			

Percent 100%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: A simplified model was used to evaluate mercury to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. As a result of these discharges, human health or the environment has been exposed to significant amounts of pollutants which do exceed levels that are protective of human health or environmental receptors.

Adjustment $0

$10,000

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 $40,000

Four monthly events are recommended for the months of January, June, July, and August of 2009.

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 City does not meet the good faith criteria for this violation.

Violation Subtotal $40,000

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $55,600

This violation Final Assessed Penalty (adjusted for limits) $55,600

Economic Benefit Worksheet

Respondent City of Hitchcock
Case ID No. 38987
Req. Ent. Reference No. RN101920031
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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 1.						
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: $0

TOTAL: $0

City of Hitchcock
Docket No. 2010-0075-MWD-E
RN101920031; TPDES Permit No. WQ0010690001
Violation Table

	Ammonia Nitrogen Daily Maximum 10 mg/L	Total Mercury, Daily Average Concentration 0.002 mg/L	Total Mercury Daily Average Loading 0.05 lbs/day
December 2008	10.40	C	C
January 2009	C	0.00771	C
June 2009	C	0.00332	C
July 2009	C	0.00686	0.1016
August 2009	C	0.00970	C
mg/L = milligrams per Liter		lbs/day = pounds per day	C = compliant

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600685143	City of Hitchcock	Classification: AVERAGE	Rating: 1.93
Regulated Entity:	RN101920031	CITY OF HITCHCOCK	Classification: AVERAGE	Site Rating: 0.85

ID Number(s):	WASTEWATER	PERMIT	WQ0010690001
	WASTEWATER	PERMIT	TPDES0062243
	WASTEWATER	PERMIT	TX0062243
	WASTEWATER LICENSING	LICENSE	WQ0010690001

Location: approximately one mile south of the intersection of State Highway 6 and Farm-to-Market Road 519 in Galveston County, Texas

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: January 13, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 13, 2005 to January 13, 2010

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

Name: Harvey Wilson Phone: 239 - 0321

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.

N/A

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

N/A

C. Chronic excessive emissions events.

N/A

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

1	02/11/2005	(384980)
2	03/21/2005	(384981)
3	03/31/2005	(375405)
4	04/18/2005	(443868)
5	05/13/2005	(443869)
6	06/20/2005	(443870)
7	08/09/2005	(443871)
8	08/15/2005	(443872)
9	09/16/2005	(443873)
10	09/23/2005	(474040)
11	10/18/2005	(443874)
12	11/21/2005	(474038)

13	12/16/2005	(474039)
14	02/21/2006	(474035)
15	03/17/2006	(474036)
16	04/13/2006	(474037)
17	05/12/2006	(501969)
18	06/14/2006	(501970)
19	07/14/2006	(501971)
20	08/14/2006	(524241)
21	09/15/2006	(524242)
22	10/06/2006	(531024)
23	10/16/2006	(582869)
24	11/14/2006	(582870)
25	12/15/2006	(582871)
26	01/22/2007	(582872)
27	02/07/2007	(533911)
28	02/07/2007	(539037)
29	02/12/2007	(582863)
30	03/14/2007	(582864)
31	03/26/2007	(554681)
32	04/11/2007	(582865)
33	05/10/2007	(582866)
34	06/14/2007	(582867)
35	06/14/2007	(582868)
36	08/13/2007	(603741)
37	09/13/2007	(603742)
38	10/11/2007	(622517)
39	10/31/2007	(622518)
40	11/10/2007	(622520)
41	12/19/2007	(622519)
42	01/16/2008	(674118)
43	02/13/2008	(617705)
44	02/15/2008	(674116)
45	03/17/2008	(674117)
46	04/09/2008	(692408)
47	05/19/2008	(692409)
48	06/13/2008	(713525)
49	07/15/2008	(713526)
50	08/14/2008	(713527)
51	09/18/2008	(713528)
52	10/16/2008	(729550)
53	11/18/2008	(729551)
54	12/18/2008	(729552)
55	12/18/2008	(729553)
56	02/05/2009	(702569)
57	02/24/2009	(752799)
58	03/16/2009	(752800)
59	04/20/2009	(770432)
60	07/01/2009	(749906)
61	01/08/2010	(785810)

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

Date: 06/30/2006 (501971) CN600685143

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: 10/06/2006 (531024) CN600685143
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
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 02/07/2007 (533911) CN600685143
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
EL&MR, P. 2, No. 1. PERMIT
Description: Failure to maintain compliance with the permitted two hour peak flow limit of 5,556 gallons per minute (8 MGD).
Date 04/30/2007 (582866) CN600685143
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 12/31/2008 (729553) CN600685143
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 (752799) CN600685143
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 02/05/2009 (702569) CN600685143
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(5)
Description: Failure to maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures.
Date 06/30/2009 (582866) CN600685143

Self Report? YES Classificati 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 07/31/2009 (729553) CN600685143
Self Report? YES Classificati 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 08/31/2009 (752799) CN600685143
Self Report? YES Classificati 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	**§**	**BEFORE THE**
ENFORCEMENT ACTION	**§**	
CONCERNING	**§**	**TEXAS COMMISSION ON**
CITY OF HITCHCOCK	**§**	
RN101920031	**§**	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2010-0075-MWD-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Hitchcock ("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 presented this agreement to the Commission.

The City understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the City agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the City.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The City owns and operates a domestic wastewater treatment system located approximately one mile south of the intersection of State Highway 6 and Farm-to-Market Road 519 in Galveston County, Texas (the "Facility").

2. The City has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.

3. During a record review on September 30, 2009, TCEQ staff documented the City exceeded the daily maximum ammonia nitrogen and mercury permitted effluent limits as depicted in the table below:

	Ammonia Nitrogen Daily Maximum 10 mg/L	Total Mercury, Daily Average Concentration 0.002 mg/L	Total Mercury Daily Average Loading 0.05 lbs/day
December 2008	10.40	C	C
January 2009	C	0.00771	C
June 2009	C	0.00332	C
July 2009	C	0.00686	0.1016
August 2009	C	0.00970	C
mg/L = milligrams per Liter		lbs/day = pounds per day	C = compliant

4. The City received notice of the violations on December 20, 2009.

II. CONCLUSIONS OF LAW

1. The City is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.

2. As evidenced by Findings of Fact No. 3, the City 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. WQ0010690001 Effluent Limitations and Monitoring Requirements No. 1.

3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the City for violations of the Texas Water Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.

4. An administrative penalty in the amount of Fifty-Nine Thousand Seventy-Five Dollars ($59,075) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The City has paid One Thousand Six Hundred Forty Dollars ($1,640) of the administrative penalty. The remaining amount of Fifty-Seven Thousand Four Hundred Thirty-Five Dollars ($57,435) of the administrative penalty shall be payable in Thirty-Five (35) monthly payments of One Thousand Six Hundred Forty-One Dollars ($1,641) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment

until paid in full. If the City fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the City to meet the payment schedule of this Agreed Order constitutes the failure by the City to timely and satisfactorily comply with all the terms of this Agreed Order.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The City is assessed an administrative penalty in the amount of Fifty-Nine Thousand Seventy-Five Dollars ($59,075) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Hitchcock, Docket No. 2010-0075-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 City shall, within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0010690001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

   "I certify under penalty of law that 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 City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

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

7. 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.

8. 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.

9. 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.

10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 12/27/2010
For the Executive Director Date

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

I understand that by entering into this Agreed Order, the City of Hitchcock waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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.

_____ 11-03-10
Signature Date

ANTHONY MATRANGA _____ MAYOR
Name (Printed or typed) Title
Authorized Representative of
City of Hitchcock

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.