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**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2010-1462-MWD-E **TCEQ ID:** RN102844610 **CASE NO.:** 36662  
**RESPONDENT NAME:** City of Elkhart

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** City of Elkhart WWTP, located approximately 0.3 mile east-southeast of the intersection of State Highway 294 and Farm-to-Market Road 319 and approximately 0.6 mile southwest of the intersection of State Highway 294 and Farm-to-Market Road 861, Anderson County

**TYPE OF OPERATION:** Wastewater treatment plant

**SMALL BUSINESS:**  Yes  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 March 14, 2011. No comments were received.

**CONTACTS AND MAILING LIST:**  
**TCEQ Attorney/SEP Coordinator:** None  
**TCEQ Enforcement Coordinator:** Ms. Heather Brister, Enforcement Division, Enforcement Team 1, MC R-09, (254) 761-3034; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  
**Respondent:** The Honorable Raymond Dunlap, Mayor, City of Elkhart, P.O. Box 944, Elkhart, Texas 75839  
**Respondent's Attorney:** Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> July 20, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> August 13, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a records review.</p> <p><b>WATER</b></p> <p>Failed to comply with permitted effluent limits for 5-day biochemical oxygen demand, flow, dissolved oxygen, pH, and total suspended solids [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010735001, Effluent Limitations and Monitoring Requirements Nos. 1, 3 and 6, and TCEQ Agreed Order Docket No. 2008-1639-MWD-E, Ordering Provision No. 2].</p>	<p><b>Total Assessed:</b> \$21,070</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$21,070</p> <p><b>Compliance History Classifications:</b>                      Person/CN - Average                      Site/RN - Average</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Orders Justification:</b></p> <p>This case involves a violation of a prior Agreed Order. When the Respondent failed to comply with the prior Agreed Order, the Respondent demonstrated an indifference to legal duty.</p>	<p><b>Ordering Provisions:</b></p> <p>Within 120 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010735001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations.</p>

Additional ID No(s): WQ0010735001



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	16-Aug-2010			
	<b>PCW</b>	27-Aug-2010	<b>Screening</b>	27-Aug-2010	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	City of Elkhart
<b>Reg. Ent. Ref. No.</b>	RN102844610
<b>Facility/Site Region</b>	5-Tyler
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>		<b>No. of Violations</b>	1
<b>Enf./Case ID No.</b>	36662	<b>Order Type</b>	Findings
<b>Docket No.</b>	2010-1462-MWD-E	<b>Government/Non-Profit</b>	Yes
<b>Media Program(s)</b>	Water Quality	<b>Enf. Coordinator</b>	Heather Brister
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$7,000
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	231.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$16,170
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Notes: Enhancement for 37 months of self reported effluent violations, three NOV's with dissimilar violations, and two Agreed Orders with denial of liability.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$24,893  
 Approx. Cost of Compliance \$228,000  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$23,170
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	-9.1%	<b>Adjustment</b>	-\$2,100
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended reduction to prevent the self-reported violations from overly impacting the penalty.

<b>Final Penalty Amount</b>	\$21,070
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$21,070
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	\$21,070
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Screening Date 27-Aug-2010

Docket No. 2010-1462-MWD-E

PCW

Respondent City of Elkhart

Policy Revision 2 (September 2002)

Case ID No. 36662

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102844610

Media [Statute] Water Quality

Enf. Coordinator Heather Brister

### 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> )	37	185%
	Other written NOVs	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	2	40%
	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%
<i>Please Enter Yes or No</i>			
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)** 231%

#### >> 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 37 months of self reported effluent violations, three NOVs with dissimilar violations, and two Agreed Orders with denial of liability.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 231%

**Screening Date** 27-Aug-2010  
**Respondent** City of Elkhart  
**Case ID No.** 36662  
**Reg. Ent. Reference No.** RN102844610  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Heather Brister  
**Violation Number** 1

**Docket No.** 2010-1462-MWD-E

**PCW**

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

**Rule Cite(s)** Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010735001, Effluent Limitations and Monitoring Requirements Nos. 1, 3 and 6, and TCEQ Agreed Order Docket No. 2008-1639-MWD-E, Ordering Provision No. 2

**Violation Description** Failed to comply with permitted effluent limits, as documented during a record review conducted on July 20, 2010, and as shown in the attached 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

A simplified model was used to evaluate 5-day carbonaceous biochemical oxygen demand and flow to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Total suspended solids, pH, and dissolved oxygen were also considered. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events  Number of violation days

mark only one with an x	daily	<input type="checkbox"/>
	weekly	<input type="checkbox"/>
	monthly	<input type="checkbox"/>
	quarterly	<input checked="" type="checkbox"/>
	semiannual	<input type="checkbox"/>
	annual	<input type="checkbox"/>
single event	<input type="checkbox"/>	

**Violation Base Penalty** \$7,000

Seven quarterly events are recommended from the effective date of the Agreed Order (February 22, 2009) to the screening date (August 27, 2010).

**Good Faith Efforts to Comply**

**0.0%** Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$7,000

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$24,893

**Violation Final Penalty Total** \$21,070

**This violation Final Assessed Penalty (adjusted for limits)** \$21,070

## Economic Benefit Worksheet

**Respondent** City of Elkhart  
**Case ID No.** 36662  
**Req. Ent. Reference No.** RN102844610  
**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)	\$228,000	22-Feb-2009	30-Apr-2011	2.18	\$24,893	n/a
						\$24,893

**Notes for DELAYED costs**

Estimated cost to smoke test and repair collection lines, install a sludge dewatering box, and additional monitoring. Date required is the effective date of the Agreed Order. Final date is the anticipated 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**

\$228,000

**TOTAL**

\$24,893

Effluent Limit Violation Table

table rev.

<b>Respondent</b>	City of Elkhart
<b>ID Number(s)</b>	WQ0010735001
<b>Docket Number</b>	2010-1462-MWD-E
<b>Enf. Coordinator</b>	Heather Brister

Corresponds to Violation Number: 1

<b>EFFLUENT PARAMETER</b>							
<i>Permit Limit</i>							
	5-Day Biochemical Oxygen Demand Daily Average Concentration 10 Milligrams per Liter	5-Day Biochemical Oxygen Demand Daily Average Loading 18 Pounds per Day	Daily Average Flow 0.21 Million Gallons per Day	Dissolved Oxygen Minimum Concentration 6 Milligrams per Liter	pH Minimum 6 Standard Units	Total Suspended Solids Daily Average Concentration 10 Milligrams per Liter	Total Suspended Solids Daily Average Loading 26 Pounds per Day
<b>Month/Year</b>							
March-2009	c	c	0.213	c	c	c	32.7
April-2009	c	c	0.212	5.6	c	c	c
June-2009	c	c	c	5.9	c	11.4	c
August-2009	c	c	0.97	c	c	c	c
October-2009	c	c	c	c	c	16.6	54.2
November-2009	c	c	c	c	c	13.5	c
December-2009	c	c	c	c	c	14	28
January-2010	c	c	0.267	c	5.9	c	c
February-2010	c	20.2	0.299	c	c	18.6	51.6
March-2010	10.4	47.1	0.252	c	c	18.5	73
April-2010	c	c	c	c	c	15.2	c

c = compliant

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN600737738	City of Elkhart	Classification: AVERAGE	Rating: 6.19
Regulated Entity:	RN102844610	CITY OF ELKHART WWTP	Classification: AVERAGE	Site Rating: 12.
ID Number(s):	WASTEWATER		PERMIT	WQ0010735001
	WASTEWATER		EPA ID	TX0022578
	WASTEWATER LICENSING		LICENSE	WQ0010735001

Location: Located approximately 0.3 mile east-southeast of the intersection of State Highway 294 and Farm-to-Market Road 319 and approximately 0.6 mile southwest of the intersection of State Highway 294 and Farm-to-Market Road 861 in Anderson County, Texas

TCEQ Region: REGION 05 - TYLER  
 Date Compliance History Prepared: August 20, 2010  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: August 20, 2005 to August 20, 2010  
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Heather Brister Phone: (254) 761-3034

## 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: <b>02/22/2009</b>	ADMINORDER 2008-1639-MWD-E
Classification: Moderate	
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1) 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.	

Effective Date: <b>01/28/2010</b>	ADMINORDER 2009-1025-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: Permit Conditions No. 2.g PERMIT	
Description: Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, as documented during an investigation conducted on April 8, 2009. Specifically, the City reported an unauthorized discharge on March 24, 2009, of 150,000 gallons from the Jones Road Lift Station due to inflow from heavy rain.	

- 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  | 08/22/2005 | (441435) |
| 2  | 09/14/2005 | (431953) |
| 3  | 09/22/2005 | (441436) |
| 4  | 10/24/2005 | (469632) |
| 5  | 11/21/2005 | (436975) |
| 6  | 11/21/2005 | (469633) |
| 7  | 12/27/2005 | (469634) |
| 8  | 01/23/2006 | (469635) |
| 9  | 02/21/2006 | (469630) |
| 10 | 03/27/2006 | (469631) |

11	04/20/2006	(498975)
12	05/15/2006	(498976)
13	06/19/2006	(498977)
14	07/24/2006	(521016)
15	08/14/2006	(521017)
16	09/20/2006	(521018)
17	10/16/2006	(577039)
18	11/27/2006	(577040)
19	12/15/2006	(577041)
20	01/23/2007	(577042)
21	02/23/2007	(577034)
22	03/23/2007	(577035)
23	04/19/2007	(577036)
24	05/25/2007	(577037)
25	06/14/2007	(577038)
26	08/06/2007	(602067)
27	08/24/2007	(566653)
28	08/28/2007	(602068)
29	09/21/2007	(602069)
30	10/22/2007	(620105)
31	11/21/2007	(620106)
32	12/20/2007	(620107)
33	01/21/2008	(672521)
34	02/29/2008	(690473)
35	03/21/2008	(672520)
36	04/21/2008	(690474)
37	05/22/2008	(690475)
38	06/20/2008	(711318)
39	07/21/2008	(711319)
40	08/15/2008	(711320)
41	08/31/2008	(727896)
42	10/02/2008	(701932)
43	10/08/2008	(727897)
44	10/20/2008	(727898)
45	11/12/2008	(707640)
46	11/24/2008	(727899)
47	12/15/2008	(727900)
48	01/26/2009	(750799)
49	02/20/2009	(750798)
50	03/23/2009	(768769)
51	04/20/2009	(768770)
52	05/20/2009	(768771)
53	06/16/2009	(742386)
54	06/19/2009	(806030)
55	07/23/2009	(806031)
56	09/17/2009	(806033)
57	10/19/2009	(806034)
58	11/18/2009	(806035)
59	11/20/2009	(806032)
60	12/21/2009	(806036)
61	01/20/2010	(806037)
62	02/11/2010	(806029)
63	03/19/2010	(831358)
64	04/23/2010	(831359)
65	05/17/2010	(831360)
66	05/20/2010	(798288)
67	06/23/2010	(846416)
68	08/13/2010	(842177)

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

Date:	11/21/2005	(436975)	CN600737738
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5)		
	30 TAC Chapter 317 317.4(g)		
Description:	Failure to properly operate and maintain the aerated lagoon.		

Date:	11/30/2005	(469634)	CN600737738
Self Report?	YES		Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		

Description: TWC Chapter 26 26.121(a)  
 Failure to meet the limit for one or more permit parameter

Date: **03/31/2006** (498975) CN600737738  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)  
 Description: Failure to meet the limit for one or more permit parameter

Date: **04/30/2006** (498976) CN600737738  
 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: **06/30/2006** (521016) CN600737738  
 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** (577041) CN600737738  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)  
 Description: Failure to meet the limit for one or more permit parameter

Date: **03/31/2007** (577036) CN600737738  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)  
 Description: Failure to meet the limit for one or more permit parameter

Date: **04/30/2007** (577037) CN600737738  
 Self Report? YES Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TWC Chapter 26 26.121(a)  
 Description: Failure to meet the limit for one or more permit parameter

Date: **05/31/2007** (577038) CN600737738  
 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** (602067) CN600737738  
 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** (602068) CN600737738  
 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: **08/30/2007** (566653) **CN600737738**  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 OPERATIONAL REQUIREMENTS PERMIT  
 Description: Failure to ensure the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained.  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)  
 30 TAC Chapter 317 317.4(b)(6)  
 PERMIT CONDITIONS PERMIT  
 Description: Failure to accurately describe and/or include all treatment units used in the treatment process, in the permit renewal application received by the TCEQ on June 9, 2006.  
 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)  
 SLUDGE PROVISIONS PERMIT  
 Description: Failure to accurately complete the Annual Sludge Discharge Monitoring Report submitted to the TCEQ for the period ending July 31, 2005.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(9)  
 MONITORING AND REPORTING REQUIREMENTS PERMIT  
 Description: Failure to provide, to the Tyler Region Office, oral notification within 24 hours of becoming aware of a noncompliance and failed to submit written submission containing a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and steps taken to its adverse effects.  
 Date **08/31/2007** (602069) **CN600737738**  
 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** (620105) **CN600737738**  
 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** (620106) **CN600737738**  
 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 **11/30/2007** (620107) **CN600737738**  
 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** (672521) **CN600737738**  
 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** (690474) CN600737738  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date **04/30/2008** (690475) CN600737738  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date **06/30/2008** (711319) CN600737738  
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 **07/03/2008** (684634) CN600737738  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 291, SubChapter F 291.94(a)  
Description: Failure to properly maintain the collection system as specified in 30 TAC§291.94(a).

Date **07/31/2008** (711320) CN600737738  
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 **08/01/2008** (727896) CN600737738  
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 **08/31/2008** (727897) CN600737738  
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** (727898) CN600737738  
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** (727899) CN600737738  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date 11/30/2008 (727900) CN600737738  
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 (750799) CN600737738  
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 (750798) CN600737738  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date 03/31/2009 (768770) CN600737738  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date 04/30/2009 (768771) CN600737738  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date 06/30/2009 (806031) CN600737738  
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 08/31/2009 (806033) CN600737738  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date 10/31/2009 (806035) CN600737738  
Self Report? YES Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: Failure to meet the limit for one or more permit parameter

Date 11/30/2009 (806036) CN600737738  
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 (806037) CN600737738  
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** (806029) CN600737738  
 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 **02/28/2010** (831358) CN600737738  
 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** (831359) CN600737738  
 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 **04/30/2010** (831360) CN600737738  
 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 ELKHART  
RN102844610**

**§           BEFORE THE  
§  
§           TEXAS COMMISSION ON  
§  
§           ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2010-1462-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 the City of Elkhart (“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 presented this agreement to the Commission.

The Respondent 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 Respondent 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 Respondent.

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

**I. FINDINGS OF FACT**

1. The Respondent owns and operates a wastewater treatment plant located approximately 0.3 mile east-southeast of the intersection of State Highway 294 and Farm-to-Market Road 319 and approximately 0.6 mile southwest of the intersection of State Highway 294 and Farm-to-Market Road 861 in Anderson 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. During a record review on July 20, 2010, TCEQ staff documented the following effluent values based on the self-reported discharge monitoring reports (“DMRs”):

<b>EFFLUENT PARAMETER</b>							
<b>Permit Limit</b>							
	5-Day Biochemical Oxygen Demand Daily Average Concentration 10 Milligrams per Liter	5-Day Biochemical Oxygen Demand Daily Average Loading 18 Pounds per Day	Daily Average Flow 0.21 Million Gallons per Day	Dissolved Oxygen Minimum Concentration 6 Milligrams per Liter	pH Minimum 6 Standard Units	Total Suspended Solids Daily Average Concentration 10 Milligrams per Liter	Total Suspended Solids Daily Average Loading 26 Pounds per Day
<b>Month/Year</b>							
March-2009	c	c	0.213	c	c	c	32.7
April-2009	c	c	0.212	5.6	c	c	c
June-2009	c	c	c	5.9	c	11.4	c
August-2009	c	c	0.97	c	c	c	c
October-2009	c	c	c	c	c	16.6	54.2
November-2009	c	c	c	c	c	13.5	c
December-2009	c	c	c	c	c	14	28
January-2010	c	c	0.267	c	5.9	c	c
February-2010	c	20.2	0.299	c	c	18.6	51.6
March-2010	10.4	47.1	0.252	c	c	18.5	73
April-2010	c	c	c	c	c	15.2	c

c = compliant

4. The Respondent received notice of the violations on August 18, 2010.

## II. CONCLUSIONS OF LAW

1. The Respondent 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 Respondent failed to comply with permitted effluent limits, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0010735001, Effluent Limitations and Monitoring Requirements Nos. 1, 3 and 6, and TCEQ Agreed Order Docket No. 2008-1639-MWD-E, Ordering Provision No. 2, as documented during a record review conducted on July 20, 2010.
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety 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 Twenty-One Thousand Seventy Dollars (\$21,070) 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 Respondent has paid the Twenty-One Thousand Seventy Dollar (\$21,070) administrative penalty.

### III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Twenty-One Thousand Seventy Dollars (\$21,070) 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 Respondent'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 Elkhart, Docket No. 2010-1462-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. The Respondent shall, within 120 days after the effective date of this Agreed Order, submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0010735001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of 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  
Tyler Regional Office  
Texas Commission on Environmental Quality  
2916 Teague Drive  
Tyler, Texas 75701-3734

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. 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 Respondent if the Executive Director determines that the Respondent 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 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.
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

*John Sedlin*  
For the Executive Director

2/25/2011  
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Elkhart. I am authorized to agree to the attached Agreed Order on behalf of the City of Elkhart, 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 Elkhart 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.

*Raymond Dunslop*  
Signature

November 12, 2010  
Date

*Raymond Dunslop*  
Name (Printed or typed)  
Authorized Representative of  
City of Elkhart

*Mayor, City of*  
Title  
*Elkhart*

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