EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-1884-MWD-E **TCEQ ID:** RN101511400 **CASE NO.:** 40748

RESPONDENT NAME: WOODMARK UTILITIES, INC.

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: Woodmark Utilities, located south of Farm-to-Market Road 346, approximately 1.2 miles west of the intersection of Farm-to-Market Road 346 and United States Highway 69, south of the City of Tyler, Smith County

TYPE OF OPERATION: Wastewater treatment 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 May 16, 2011. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Ms. Lanae Foard, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2554; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495

Respondent: Mr. Ian Robertson, President, WOODMARK UTILITIES, INC., 2845 Bristol Circle, Oakville, Ontario L6H 7H7 Canada

Mr. David J. Bronicheski, CFO, Treasurer and Secretary, WOODMARK UTILITIES, INC., 2845 Bristol Circle, Oakville, Ontario L6H 7H7 Canada

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 Record Review Relating to this Case:** October 26, 2010 **Date of NOV/NOE Relating to this Case:** November 12, 2010 (NOE) **Background Facts:** This was a records review. **WATER** Failed to comply with permitted effluent limits for ammonia nitrogen, total suspended solids, and Escherichia coli [30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121(a)(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013168001, Interim Effluent Limitations and Monitoring Requirements No. 1].	**Total Assessed:** $8,600 **Total Deferred:** $1,720 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $6,880 **Compliance History Classification:** 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, within 90 days after the effective date of this Agreed Order, submit written certification of compliance with effluent limits of TPDES Permit No. WQ0013168001, 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).: WQ0013168001

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES					
Assigned	15-Nov-2010				
PCW	15-Feb-2011	Screening	19-Nov-2010	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	WOODMARK UTILITIES, INC.		
Reg. Ent. Ref. No.	RN101511400		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	40748	No. of Violations	1
Docket No.	2010-1884-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1

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

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* **$4,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — **120.0%** Enhancement — *Subtotals 2, 3, & 7* **$4,800**

Notes: Enhancement for 17 months of self-reported effluent violations, three NOVs with same/similar violations, and one order with denial.

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 $984
Approx. Cost of Compliance $10,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* **$8,800**

OTHER FACTORS AS JUSTICE MAY REQUIRE — **-2.3%** — *Adjustment* **-$200**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Reduction so that self-reported violations do not overly impact the penalty amount.

Final Penalty Amount **$8,600**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$8,600**

DEFERRAL — **20.0%** Reduction — *Adjustment* **-$1,720**

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 **$6,880**

Screening Date 19-Nov-2010 **Docket No.** 2010-1884-MWD-E

PCW

Respondent WOODMARK UTILITIES, INC.

Policy Revision 2 (September 2002)

Case ID No. 40748

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101511400

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

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	0	0%
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) 120%

>> 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 17 months of self-reported effluent violations, three NOVs with same/similar violations, and one order with denial.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 120%

Screening Date 19-Nov-2010 **Docket No.** 2010-1884-MWD-E **PCW**

Respondent WOODMARK UTILITIES, INC.

Policy Revision 2 (September 2002)

Case ID No. 40748

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101511400

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013168001 Interim Effluent Limitations and Monitoring Requirements No. 1

Violation Description Failed to comply with permitted effluent limits, as documented during a record review conducted on October 26, 2010, and shown in the attached violation table.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: A simplified model was used to evaluate ammonia nitrogen to determine whether the discharged amounts of pollutants exceeded protective levels. Total suspended solids and Escherichia coli 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 protective levels.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 4 | 183 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $4,000

Four quarterly events are recommended.

Good Faith Efforts to Comply

0.0% Reduction $0

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

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

Violation Subtotal $4,000

Economic Benefit (EB) for this violation

Estimated EB Amount $984

Statutory Limit Test

Violation Final Penalty Total $8,600

This violation Final Assessed Penalty (adjusted for limits) $8,600

Economic Benefit Worksheet

Respondent WOODMARK UTILITIES, INC.
Case ID No. 40748
Reg. Ent. Reference No. RN101511400
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
	No commas or $						
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				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)	$10,000	31-Aug-2009	19-Aug-2011	1.97	$984	n/a	$984

Notes for DELAYED costs Estimated cost to determine the cause of noncompliance and to make any necessary repairs/adjustments to the Facility. Date required is the initial date of noncompliance. Final date is the expected date of compliance.

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

Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0

Notes for AVOIDED costs

Approx. Cost of Compliance $10,000

TOTAL $984

EFFLUENT VIOLATION TABLE WOODMARK UTILITIES, INC. TPDES Permit No. WQ0013168001 Docket No. 2010-1884-MWD-E						
	Monitoring Period					
Permitted Effluent Limits	August 2009	September 2009	January 2010	April 2010	May 2010	June 2010
NH_3-N Daily Avg. Conc. Limit = 3 mg/L	c	3.99	3.55	3.25	4.40	7.60
NH_3-N Daily Avg. Loading Limit = 6.3 lbs/day	c	8.30	7.02	c	7.65	16.50
NH_3-N Single Grab Max. Limit = 15 mg/L	c	c	c	c	c	15.90
TSS Daily Avg. Conc. Limit = 15 mg/L	c	c	18.00	c	c	c
TSS Daily Avg. Loading Limit = 31 lbs/day	c	c	36.50	c	c	c
Escherichia coli Daily Avg. Max. Limit = 126 CFU/100mL	152	c	c	c	c	c

NH_3-N = ammonia nitrogen
TSS = total suspended solids
CFU/100mL = colony forming units per 100 milliliters
conc. = concentration
c = compliant
mg/L = milligrams per liter
lbs/day = pounds per day
avg. = average
max. = maximum

Compliance History

Customer/Respondent/Owner-Operator:	CN600788137	WOODMARK UTILITIES, INC.	Classification: AVERAGE	Rating: 2.81
Regulated Entity:	RN101511400	WOODMARK UTILITIES	Classification: AVERAGE	Site Rating: 2.62

ID Number(s):	WASTEWATER	PERMIT	WQ0013168001
	WASTEWATER	EPA ID	TX0098795
	WASTEWATER LICENSING	LICENSE	WQ0013168001

Location: South of Farm-to Market Road 346, approximately 1.2 miles west of the intersection of Farm-to-Market Road 346 and United States Highway 69, south of Tyler, Smith County, Texas

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: November 17, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: November 17, 2005 to November 17, 2010

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

Name: Lanae Foard Phone: (512) 239-2554

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator?
   N/A
4. If Yes, who was/were the prior owner(s)/operator(s)?
   N/A
5. When did the change(s) in owner or operator occur?
   N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 05/11/2007 ADMINORDER 2004-0677-MWD-E

Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(4)
30 TAC Chapter 305, SubChapter F 305.125(5)
Rqmt Prov: 13168-001 PERMIT

Description: Failure to clean and remediate the area effected by the October 27, 2003, unauthorized discharge of wastewater from the Sandhill Lane lift station.

Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
30 TAC Chapter 317 317.3
Rqmt Prov: Operational Req. Prov 1 PERMIT

Description: Failure to ensure all lift stations are intruder-resistant with a controlled access.

Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Rqmt Prov: Operational Req. Prov. 1 PERMIT

Description: Failure to properly maintain the wastewater collection system in a manner to prevent infiltration.

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	11/28/2005	(438385)
2	02/27/2006	(478574)
3	03/21/2006	(478575)
4	11/18/2005	(478577)
5	12/27/2005	(478578)
6	02/06/2006	(478579)
7	05/17/2006	(504701)
8	05/26/2006	(504702)
9	07/19/2006	(527010)
10	03/05/2007	(627536)
11	04/20/2007	(627537)
12	05/23/2007	(627538)
13	06/20/2007	(627539)
14	07/23/2007	(627540)
15	08/16/2007	(627541)
16	10/09/2006	(627542)
17	09/24/2007	(627543)
18	11/10/2006	(627544)
19	10/18/2007	(627545)
20	11/27/2006	(627546)
21	11/26/2007	(627547)
22	12/21/2006	(627548)
23	12/12/2007	(627549)
24	02/12/2007	(627550)
25	03/21/2008	(638235)
26	04/04/2008	(641013)
27	02/19/2008	(676166)
28	02/11/2008	(676167)
29	06/06/2008	(682166)
30	03/24/2008	(694531)
31	04/18/2008	(694532)
32	05/19/2008	(694533)
33	06/23/2008	(715960)
34	07/21/2008	(715961)
35	08/20/2008	(715962)
36	10/03/2008	(715963)
37	10/24/2008	(731582)
38	02/19/2009	(754928)
39	01/12/2009	(754929)
40	01/12/2009	(754930)
41	02/19/2009	(754931)
42	09/23/2009	(767070)
43	03/30/2009	(772110)
44	04/20/2009	(772111)
45	02/09/2010	(790419)
46	02/12/2010	(816363)
47	06/23/2009	(816364)
48	06/23/2009	(816365)
49	08/07/2009	(816366)
50	11/10/2009	(816367)
51	09/21/2009	(816368)
52	11/10/2009	(816369)
53	12/07/2009	(816370)
54	01/08/2010	(816371)
55	02/03/2010	(816372)
56	03/12/2010	(834961)
57	05/20/2010	(834962)
58	05/28/2010	(834963)
59	06/22/2010	(847509)
60	07/19/2010	(868463)
61	09/02/2010	(868464)
62	11/12/2010	(871946)
63	09/29/2010	(875363)

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

Date: 06/30/2007 (627540) CN600788137
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 (627541) CN600788137
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 (627543) CN600788137
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 (694531) CN600788137
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 (715960) CN600788137
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: 06/23/2008 (687803) CN600788137
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 317 317.2(d)(1)(F)
TWC Chapter 26 26.121
Description: Failure to prevent an unauthorized discharge of raw sewage from the lift station at Laura Lane and FM 346.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
Description: Failure to maintain the fence around the lift station in good repair.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
Description: Failure to perform adequate inspection and maintenance of the collection system and related appurtenances.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 317 317.2(d)(1)(F)
5A THSC Chapter 341, SubChapter A 341.014
Description: Failure to remove and disinfect the sewage in the ditch along FM 346.

Date: 09/30/2008 (731582) CN600788137
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 (754929) CN600788137
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 (754930) CN600788137
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 (754928) CN600788137
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: 02/28/2009 (772110) CN600788137
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 (772111) CN600788137
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: 07/20/2009 (761966) CN600788137
Self Report? NO Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(d)
5A THSC Chapter 341, SubChapter A 341.014
Description: Failure to prevent an unauthorized discharge of raw sewage.

Date: 08/24/2009 (767070) CN600788137
Self Report? NO Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(d)
5A THSC Chapter 341, SubChapter A 341.014
Description: Failure to prevent an unauthorized discharge of raw sewage.

Date: 08/31/2009 (816368) CN600788137
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 (816369) CN600788137
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 (816363) CN600788137
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 (834963) CN600788137
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: 05/31/2010 (847509) CN600788137

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: 06/30/2010 (868463) CN600788137

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
WOODMARK UTILITIES, INC.	§	
RN101511400	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2010-1884-MWD-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding WOODMARK UTILITIES, INC. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a wastewater treatment facility located south of Farm-to-Market Road 346, approximately 1.2 miles west of the intersection of Farm-to-Market Road 346 and United States Highway 69, south of Tyler in Smith County, Texas (the "Facility").

2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.

3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about November 17, 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 Eight Thousand Six Hundred Dollars ($8,600) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Six Thousand Eight Hundred Eighty Dollars ($6,880) of the administrative penalty and One Thousand Seven Hundred Twenty Dollars ($1,720) 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)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013168001 Interim Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on October 26, 2010, and shown in the following violation table:

EFFLUENT VIOLATION TABLE						
	Monitoring Period					
Permitted Effluent Limits	**August 2009**	**September 2009**	**January 2010**	**April 2010**	**May 2010**	**June 2010**
NH_3-N Daily Avg. Conc. Limit = 3 mg/L	c	3.99	3.55	3.25	4.40	7.60
NH_3-N Daily Avg. Loading Limit = 6.3 lbs/day	c	8.30	7.02	c	7.65	16.50
NH_3-N Single Grab Max. Limit = 15 mg/L	c	c	c	c	c	15.90
TSS Daily Avg. Conc. Limit = 15 mg/L	c	c	18.00	c	c	c
TSS Daily Avg. Loading Limit = 31 lbs/day	c	c	36.50	c	c	c
Escherichia coli Daily Avg. Max. Limit = 126 CFU/100mL	152	c	c	c	c	c

NH_3-N = ammonia nitrogen
TSS = total suspended solids
CFU/100mL = colony forming units per 100 milliliters
conc. = concentration
c = compliant
mg/L = milligrams per liter
lbs/day = pounds per day
avg. = average
max. = maximum

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: WOODMARK UTILITIES, INC., Docket No. 2010-1884-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, within 90 days after the effective date of this Agreed Order, the Respondent shall submit written certification of compliance with the effluent limits of TPDES Permit No. WQ0013168001, 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 include detailed supporting documentation to demonstrate compliance, 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
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. 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

_____ 4.14.2011
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.

_____ February 25, 2011
Signature Date

David J. Bronicheski CFO, Treasurer and Secretary
Name (Printed or typed) Title
Authorized Representative of
WOODMARK UTILITIES, INC.

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.