

**Executive Summary – Enforcement Matter – Case No. 42565**

**City of Lovelady**

**RN102185543**

**Docket No. 2011-1699-MWD-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

**Media:**

MWD

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

City of Lovelady, located approximately 0.5 mile southwest of the intersection of State Highway 19 and Farm-to-Market Road 1280, Houston County

**Type of Operation:**

Wastewater treatment plant

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** February 3, 2012

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$10,200

**Amount Deferred for Expedited Settlement:** \$0

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$850

**Total Due to General Revenue:** \$9,350

Payment Plan: 11 payments of \$850 each

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 42565**  
**City of Lovelady**  
**RN102185543**  
**Docket No. 2011-1699-MWD-E**

***Investigation Information***

**Complaint Date(s):** N/A  
**Complaint Information:** N/A  
**Date(s) of Investigation:** August 23, 2011  
**Date(s) of NOE(s):** September 14, 2011

***Violation Information***

Failed to prevent the discharge of sludge from the Facility into or adjacent to water in the state [Texas Pollutant Discharge Elimination System Permit No. WQ0010734001, Effluent Limitations and Monitoring Requirements No. 4 and Permit Conditions No. 2.d. and TEX. WATER CODE 26.121(a)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 15 days, properly remove and dispose of all accumulations of sludge in the receiving stream;
- b. Within 30 days, submit written certification of compliance with Ordering Provision a.;
- c. Within 60 days, evaluate the system to determine the root cause of the elevated levels of pollutants and implement the appropriate corrective actions to eliminate its re-occurrence; and
- d. Within 75 days, submit written certification demonstrating compliance with Ordering Provision c.

***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**Executive Summary – Enforcement Matter – Case No. 42565**  
**City of Lovelady**  
**RN102185543**  
**Docket No. 2011-1699-MWD-E**

**TCEQ Enforcement Coordinator:** Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.

**TCEQ SEP Coordinator:** N/A

**Respondent:** The Honorable Michael R. Broxson, Mayor, City of Lovelady, P.O. Box 83, Lovelady, Texas 75851

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	19-Sep-2011	<b>Screening</b>	19-Sep-2011	<b>EPA Due</b>	
	<b>PCW</b>	21-Sep-2011				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	City of Lovelady		
<b>Reg. Ent. Ref. No.</b>	RN102185543		
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	42565	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-1699-MWD-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Jorge Ibarra, P.E.
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

Notes: Enhancement for two Agreed Orders with denial of liability, two NOV's with dissimilar violations, and 12 months of self-reported effluent violations.

**Culpability**   Enhancement **Subtotal 4**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  Enhancement\* **Subtotal 6**

Total EB Amounts   
 Approx. Cost of Compliance  \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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.

**PAYABLE PENALTY**

**Screening Date** 19-Sep-2011

**Docket No.** 2011-1699-MWD-E

**PCW**

**Respondent** City of Lovelady

Policy Revision 2 (September 2002)

**Case ID No.** 42565

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN102185543

**Media [Statute]** Water Quality

**Enf. Coordinator** Jorge Ibarra, P.E.

**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> )	12	60%
	Other written NOVs	2	4%
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%

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)** 104%

>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for two Agreed Orders with denial of liability, two NOVs with dissimilar violations, and 12 months of self-reported effluent violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 104%

Screening Date 19-Sep-2011

Docket No. 2011-1699-MWD-E

PCW

Respondent City of Lovelady

Policy Revision 2 (September 2002)

Case ID No. 42565

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102185543

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 1

Rule Cite(s) Texas Pollutant Discharge Elimination System Permit No. WQ0010734001, Effluent Limitations and Monitoring Requirements No. 4 and Permit Conditions No. 2.d. and Tex. Water Code 26.121(a)

Violation Description Failed to prevent the discharge of sludge from the Facility into or adjacent to water in the state. Specifically, sludge and bloodworms were noted in the receiving stream near the outfall and approximately 50 feet downstream of the outfall. See attached table for grab sample results.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	x			50%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				0%

Matrix Notes Human health or the environment has been exposed to pollutants which exceeded levels that are protective of human health or environmental receptors.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 1 Number of violation days 27

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

Violation Base Penalty \$5,000

One monthly event is recommended from the record review date of August 23, 2011 to the screening date of September 19, 2011.

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 \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$104

Violation Final Penalty Total \$10,200

This violation Final Assessed Penalty (adjusted for limits) \$10,200

# Economic Benefit Worksheet

**Respondent** City of Lovelady  
**Case ID No.** 42565  
**Reg. Ent. Reference No.** RN102185543  
**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	\$3,000	23-Aug-2011	1-May-2012	0.69	\$104	n/a	\$104
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly remove and dispose of all accumulations of sludge in the receiving stream and to develop and implement corrective actions to prevent the future discharge of sludge from the Facility into the receiving stream. Date required is the record review date and the final date is the expected compliance date.

### 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 \$3,000

**TOTAL** \$104

**Effluent Limit Violation Table**

City of Lovelady  
 RN102185543, Case No. 42565, TPDES Permit No. WQ0010734001  
 2011-1699-MWD-E  
 Jorge Ibarra, P.E.

Corresponds to Violation Number:

1

**EFFLUENT PARAMETER**

**Permit Limit**

	Ammonia	Orthophosphate	Phosphorous	TKN	TOC	COD
<i>Location</i>	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
Outfall	28.6	3.36	3.46	31.7	100	306
50 feet downstream	26.5	0.5	0.47	31.6	103	307
Upstream	0.2	0.04	0.02	0.42	4	10

Name
milligrams per liter - mg/L
Total Kjeldahl Nitrogen - TKN
Total Organic Carbon - TOC
Chemical Oxygen Demand - COD



## Compliance History

Customer/Respondent/Owner-Operator:	CN600658025	City of Lovelady	Classification: AVERAGE	Rating: 4.55
Regulated Entity:	RN102185543	CITY OF LOVELADY	Classification: AVERAGE	Site Rating: 4.55
ID Number(s):	WASTEWATER	PERMIT		WQ0010734001
	WASTEWATER	EPA ID		TX0027138
	WASTEWATER LICENSING	LICENSE		WQ0010734001
Location:	located approximately 0.5 mile southwest of the intersection of State Highway 19 and Farm-to-Market Road 1280 in Houston County, Texas			
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	September 20, 2011			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 20, 2006 to September 20, 2011			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Jorge Ibarra, P.E.	Phone:	(817) 588-5890	

### 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: 9/1/2011 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: 05/25/2007 ADMINORDER 2003-1298-MWD-E

Classification: Moderate

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

Rqmt Prov: Effluent Limits PERMIT

Description: Failure to comply with the permit limit for 5-day Biochemical Oxygen Demand daily average (mg/l) at Outfall 001A for the monitoring periods ending 10/31/01 and 11/30/01. These violations meet referral criteria.

Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 305, SubChapter F 305.125(5)  
30 TAC Chapter 305, SubChapter F 305.126(a)

Rqmt Prov: WQ 10734-001 PERMIT

Description: Failure by the City of Lovelady to properly maintain units of conveyance. Review of effluent flow charts indicate that the facility is severely impacted by I/I.

Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)  
30 TAC Chapter 319, SubChapter A 319.7(c)

Rqmt Prov: WQ 10734-001 PERMIT

Description: Failure by the City of Lovelady to maintain records of calibration. A pH meter calibration log was not maintained.

Effective Date: 08/27/2011 ADMINORDER 2011-0351-MWD-E

Classification: Major

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 319, SubChapter A 319.7(d)

Rqmt Prov: Effluent Reporting Requirements PERMIT

Description: Failure to timely submit the monthly DMRs by the 20th day of the following month. Specifically, the DMRs for the months of February 2010, March 2010, May 2010, September 2010, and November 2010 were submitted March 9, 2011.

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(17)

Rqmt Prov: Sludge Reporting Requirements PERMIT

Description: Failure to timely submit monitoring results at the intervals specified in the permit. Specifically, the Respondent failed to submit the annual sludge report for the reporting period ending July 31, 2010 by September 1, 2010.

Classification: Moderate

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

Rqmt Prov: Effluent Limits PERMIT

Description: Failure to comply with permitted effluent limits for 5-day biochemical oxygen demand, pH, and dissolved oxygen.

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	09/25/2006	(522104)
2	10/30/2006	(546762)
3	12/01/2006	(546763)
4	01/29/2007	(546764)
5	05/03/2007	(558775)
6	06/08/2007	(563011)
7	02/28/2007	(579051)
8	03/26/2007	(579052)
9	05/07/2007	(579053)
10	05/18/2007	(579054)
11	06/21/2007	(579055)
12	01/10/2007	(579056)
13	08/13/2007	(602687)
14	08/13/2007	(602688)
15	09/27/2007	(602689)
16	10/22/2007	(620940)
17	11/28/2007	(620941)
18	12/20/2007	(620942)
19	02/19/2008	(673111)
20	01/21/2008	(673112)
21	03/31/2008	(691254)
22	04/21/2008	(691255)
23	05/30/2008	(691256)
24	02/04/2009	(700796)
25	06/30/2008	(712111)
26	07/14/2008	(712112)
27	08/25/2008	(712113)
28	09/22/2008	(712114)
29	10/23/2008	(728482)
30	11/12/2008	(728483)
31	12/19/2008	(728484)
32	02/26/2009	(751573)
33	02/13/2009	(751574)
34	03/18/2009	(769323)
35	04/27/2009	(769324)
36	05/15/2009	(769325)
37	02/26/2010	(807708)
38	06/19/2009	(807709)
39	07/30/2009	(807710)
40	07/21/2009	(807711)

41	09/23/2009	(807712)
42	10/26/2009	(807713)
43	11/19/2009	(807714)
44	12/28/2009	(807715)
45	01/21/2010	(807716)
46	07/19/2010	(825924)
47	06/01/2010	(845163)
48	06/30/2010	(861171)
49	08/19/2010	(867254)
50	09/27/2010	(874297)
51	11/18/2010	(888379)
52	03/04/2011	(895056)
53	01/24/2011	(902662)
54	03/11/2011	(926039)
55	03/23/2011	(926040)
56	03/11/2011	(926041)
57	04/20/2011	(926042)
58	03/11/2011	(926043)
59	03/11/2011	(926044)
60	03/11/2011	(926045)
61	05/27/2011	(938423)
62	08/09/2011	(943892)
63	06/16/2011	(945787)
64	09/14/2011	(950651)
65	07/21/2011	(953036)

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

Date:	10/31/2006	(546763)	CN600658025		
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:	05/03/2007	(558775)	CN600658025		
Self Report?	NO			Classification	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) 30 TAC Chapter 305, SubChapter F 305.125(5) 30 TAC Chapter 305, SubChapter F 305.126(a) WQ 10734-001 PERMIT				
Description:	Failure by the City of Lovelady to properly maintain units of conveyance. Review of effluent flow charts indicate that the facility is severely impacted by I/I.				
Self Report?	NO			Classification	Moderate
Citation:	OpR 1 PERMIT				
Description:	Failure by the City of Lovelady to maintain two operable pumps in Lift Station #2 (Raines Street).				
Date:	05/31/2007	(579055)	CN600658025		
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:	11/30/2007	(620942)	CN600658025		
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	(673112)	CN600658025		
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 (691254)	CN600658025	
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 (728482)	CN600658025	
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 (926043)	CN600658025	
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	07/31/2010 (867254)	CN600658025	
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	08/31/2010 (874297)	CN600658025	
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	09/30/2010 (926044)	CN600658025	
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	10/31/2010 (888379)	CN600658025	
Self Report?	YES	Classification	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)		
Description:	Failure to meet the limit for one or more permit parameter		
Date	11/30/2010 (926045)	CN600658025	
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	08/09/2011 (943892)	CN600658025	
Self Report?	NO	Classification	Moderate
Citation:	MRR PERMIT		
Description:	Failure by the City of Lovelady to report any effluent violation which deviates from the permitted effluent limitation by more than 40% in writing to the Regional Office and the Enforcement Division (MC 224) within five working days of becoming aware of the noncompliance.		
Self Report?	NO	Classification	Minor
Citation:	ELMR PERMIT		
Description:	Failure by the City of Lovelady to collect E. coli samples as required by the water quality discharge permit.		
Self Report?	NO	Classification	Minor
Citation:	OpR PERMIT		
Description:	Failure by the City of Lovelady to properly operate and maintain all collection, treatment, and disposal units.		
Self Report?	NO	Classification	Minor
Citation:	MRR PERMIT		
Description:	Failure by the City of Lovelady to include quality assurance/quality control records in the monitoring records.		

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 LOVELADY  
RN102185543**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2011-1699-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 Lovelady (“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 0.5 mile southwest of the intersection of State Highway 19 and Farm-to-Market Road 1280 in Houston 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 August 23, 2011, TCEQ staff documented that the Respondent did not prevent the discharge of sludge from the Facility into or adjacent to water in the state. Specifically, sludge and bloodworms were noted in the receiving stream near the outfall and approximately 50 feet downstream. Results from grab sample collected from the receiving stream indicate elevated levels of pollutants, as shown in the following table:

<b>EFFLUENT PARAMETER</b>						
<b>Permit Limit</b>						
	Ammonia	Orthophosphate	Phosphorous	TKN	TOC	COD
<b>Location</b>	mg/L	mg/L	mg/L	mg/L	mg/L	mg/L
Outfall	28.6	3.36	3.46	31.7	100	306
50 feet downstream	26.5	0.5	0.47	31.6	103	307
Upstream	0.2	0.04	0.02	0.42	4	10

total kjeldahl nitrogen = TKN    total organic carbon = TOC  
 chemical oxygen demand = COD    milligrams per liter = mg/L

4. The Respondent received notice of the violations on September 19, 2011.

## 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 prevent the discharge of sludge from the Facility into or adjacent to water in the state, in violation of Texas Pollutant Discharge Elimination System Permit No. WQ0010734001, Effluent Limitations and Monitoring Requirements No. 4 and Permit Conditions No. 2.d. and TEX. WATER CODE 26.121(a).
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 Ten Thousand Two Hundred Dollars (\$10,200) 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 Eight Hundred Fifty Dollars (\$850) of the administrative penalty. The remaining amount of Nine Thousand Three Hundred Fifty Dollars (\$9,350) of the administrative penalty shall be payable in eleven monthly payments of Eight Hundred Fifty Dollars (\$850) 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 Respondent 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 Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent 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 Respondent is assessed an administrative penalty in the amount of Ten Thousand Two Hundred Dollars (\$10,200) 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 Lovelady, Docket No. 2011-1699-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 undertake the following technical requirements:
  - a. Within 15 days after the effective date of this Agreed Order, properly remove and dispose of all accumulations of sludge in the receiving stream;

- b. Within 30 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision 2.a., in accordance with Order Provision No. 2.d. below;
- c. Within 60 days after the effective date of this Agreed Order, evaluate the system to determine the root cause of the elevated levels of pollutants and implement the appropriate corrective actions to eliminate its re-occurrence; and
- d. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.c. 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  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1892

- 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

P. D. Hyde  
For the Executive Director

2/22/12  
Date

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

Michael R. Broxson  
Signature

12/09/11  
Date

Michael R. Broxson  
Name (Printed or typed)  
Authorized Representative of  
City of Lovelady

Mayor  
Title

**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.