

**Executive Summary – Enforcement Matter – Case No. 41339
Nueces County Water Control and Improvement District No. 5
RN101609543
Docket No. 2011-0431-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:

No

Location(s) Where Violation(s) Occurred:

Banquete Wastewater Treatment Facility, located at the crossing of Banquete Creek and County Road 40, approximately 1.25 miles east of Farm-to-Market Road 666 and 0.5 mile south of State Highway 44, Nueces County

Type of Operation:

Municipal wastewater treatment facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: April 13, 2012

Comments Received: No

Penalty Information

Total Penalty Assessed: \$87,605

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$62,730

Total Paid to General Revenue: \$690

Total Due to General Revenue: \$24,185

Payment Plan: 35 payments of \$691 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: \$400

Applicable Penalty Policy: September 2002

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Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: January 14 through 18, 2011

Date(s) of NOE(s): February 28, 2011

Violation Information

1. Failed to ensure that the facility and all its systems of collection, treatment, and disposal are properly operated and maintained, which led to a discharge into water in the state [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1) and (5), and Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0011583001, Permit Conditions No. 2.d. and Operational Requirements No. 1].
2. Failed to prevent the unauthorized discharge of wastewater and sludge into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0011583001, Permit Conditions Nos. 2.d. and 2.g.].
3. Failed to report a noncompliance to the TCEQ regional office either orally or by fax within 24 hours of becoming aware of the noncompliance, followed by a written submission within five working days [30 TEX. ADMIN. CODE § 305.125(1) and (9)(A), and TPDES Permit No. WQ0011583001, Monitoring and Reporting Requirements No. 7.a.].
4. Failed to ensure that the facility and all its systems of collection, treatment, and disposal are properly operated and maintained [30 TEX. ADMIN. CODE § 305.125(1) and (5), and TPDES Permit No. WQ0011583001, Operational Requirements No. 1].
5. Failed to employ or contract with a licensed operator [30 TEX. ADMIN. CODE §§ 30.350(d) and 305.125(1) and TPDES Permit No. WQ0011583001, Other Requirements No. 1].
6. Failed to maintain compliance with permitted effluent limitations for total suspended solids, residual chlorine, dissolved oxygen, and biochemical oxygen demand [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0011583001, Effluent Limitations and Monitoring Requirements Nos. 1, 2, and 6].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent has implemented the following corrective measures at the Facility:

- a. By January 14, 2011, contracted with a licensed operator to maintain and operate the Facility;

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Docket No. 2011-0431-MWD-E

- b. By January 16, 2011, removed the wastewater solids from Banquete Creek;
- c. By February 14, 2011, completed repairs to the chlorinators in the chlorine contact chamber and the pump at the Facility's lift station; and
- d. By June 2, 2011, removed any remaining wastewater solids and sludge from the area around the headworks of the Facility and the area around the chlorine contact chamber.

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days, update operational guidance and conduct employee training to ensure that noncompliance notifications are submitted as required;
- b. Within 45 days, submit written certification of compliance with Ordering Provision a.;
- c. Within 90 days:
 - i. Develop and implement operation and maintenance practices designed to prevent solids accumulation in the Facility and future discharges from the clarifier, the headworks, and the chlorine contact chamber;
 - ii. Submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0011583001, 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.
- d. Within 105 days, submit written certification demonstrating compliance.

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
TCEQ Enforcement Coordinator: Lanae Foard, Enforcement Division,
Enforcement Team 1, MC 169, (512) 239-2554; Debra Barber, Enforcement Division,
MC 219, (512) 239-0412
TCEQ SEP Coordinator: N/A

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Docket No. 2011-0431-MWD-E

Respondent: Miguel Pena, Board President, Nueces County Water Control and Improvement District No. 5, P.O. Box 157, Banquete, Texas 78339

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	7-Mar-2011	Screening	21-Mar-2011	EPA Due	
	PCW	2-Jun-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	Nueces County Water Control and Improvement District No. 5
Reg. Ent. Ref. No.	RN101609543
Facility/Site Region	14-Corpus Christi
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	6
Enf./Case ID No.	41339	Order Type	Findings
Docket No.	2011-0431-MWD-E	Government/Non-Profit	Yes
Media Program(s)	Water Quality	Enf. Coordinator	Lanae Foard
Multi-Media		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** **\$44,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **102.0%** Enhancement **Subtotals 2, 3, & 7** **\$44,880**

Notes: Enhancement for two NOVs with same/similar violations, thirteen months of self-reported effluent violations, one NOV with dissimilar violations, and one order without denial of liability.

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** **\$875**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts \$803
Approx. Cost of Compliance \$65,260
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$88,005**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$88,005**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$87,605**

DEFERRAL **0.0%** Reduction **Adjustment** **\$0**

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

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$87,605**

Screening Date 21-Mar-2011

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PCW

Respondent Nueces County Water Control and Improvement [

Policy Revision 2 (September 2002)

Case ID No. 41339

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101609543

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 (<i>number of NOVs meeting criteria</i>)	15	75%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
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) 102%

>> **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 NOVs with same/similar violations, thirteen months of self-reported effluent violations, one NOV with dissimilar violations, and one order without denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 102%

Screening Date 21-Mar-2011

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PCW

Respondent Nueces County Water Control and Improvement District No. 5

Policy Revision 2 (September 2002)

Case ID No. 41339

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101609543

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 (5), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011583001, Permit Conditions No. 2.d and Operational Requirements No. 1

Violation Description Failed to ensure that the facility and all its systems of collection, treatment, and disposal are properly operated and maintained, which led to a discharge into water in the state, as documented during an investigation beginning on January 14, 2011. Specifically, wastewater solids and sludge washed out of the clarifier and into the receiving stream (Banquete Creek) between January 13 and January 16, 2011.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which exceed protective levels as a result of this violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 4

4 Number of violation days

daily	x
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$20,000

Four daily events are recommended from the date of the first discharge (January 13, 2011) to the date of the last discharge (January 16, 2011).

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/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 \$20,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$349

Violation Final Penalty Total \$40,400

This violation Final Assessed Penalty (adjusted for limits) \$40,000

Economic Benefit Worksheet

Respondent Nueces County Water Control and Improvement District No. 5
Case ID No. 41339
Req. Ent. Reference No. RN101609543
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	\$10,000	13-Jan-2011	13-Jul-2011	0.50	\$17	\$331	\$347
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	\$5,425	13-Jan-2011	16-Jan-2011	0.01	\$2	n/a	\$2
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to make necessary repairs to the clarifier and to develop and implement operation and maintenance practices designed to prevent solids accumulation in the Facility and future discharges, and actual cost provided by the Repondent to remove solids from the receiving stream. Date required is the date of the initial discharge. Final dates are the dates solids were removed from the stream (January 16, 2011) and the expected date of compliance (July 13, 2011).

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

\$15,425

TOTAL

\$349

Screening Date 21-Mar-2011

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PCW

Respondent Nueces County Water Control and Improvement District No. 5

Policy Revision 2 (September 2002)

Case ID No. 41339

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101609543

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number 2

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0011583001, Permit Conditions Nos. 2.d and 2.g

Violation Description

Failed to prevent the unauthorized discharge of wastewater and sludge into or adjacent to water in the state, as documented during an investigation beginning on January 14, 2011. Specifically, there was evidence that wastewater overflowed from the headworks structure at the Facility on or about January 9, 2011, and sludge overflowed from the chlorine contact chamber on January 16, 2011.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants as a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 6

66 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$15,000

Six monthly events are recommended. Three monthly events for each discharge, from the date the first discharge was documented and the date of the second discharge (January 14 and 16, 2011) to the screening date (March 21, 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 \$15,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$95

Violation Final Penalty Total \$30,300

This violation Final Assessed Penalty (adjusted for limits) \$30,300

Economic Benefit Worksheet

Respondent Nueces County Water Control and Improvement District No. 5
Case ID No. 41339
Reg. Ent. Reference No. RN101609543
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$5,000	14-Jan-2011	2-Jun-2011	0.38	\$95	n/a	\$95
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove and dispose of discharged wastewater solids and sludge. Date required is the date the first discharge was documented. Final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$95

Screening Date 21-Mar-2011

Docket No. 2011-0431-MWD-E

PCW

Respondent Nueces County Water Control and Improvement District No. 5

Policy Revision 2 (September 2002)

Case ID No. 41339

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101609543

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and (9)(A), and TPDES Permit No. WQ0011583001, Monitoring and Reporting Requirements No. 7.a

Violation Description

Failed to report a noncompliance to the TCEQ regional office either orally or by fax within 24 hours of becoming aware of the noncompliance, followed by a written submission within five working days, as documented during an investigation beginning on January 14, 2011. Specifically, notification of the discharge that occurred on or about January 9, 2011, was not made orally or by fax within 24 hours. In addition, written notifications of the the discharges that occurred on or about January 9, 2011, and on January 15, and 16, 2011, were not submitted within five working days.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the permit requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3

70 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$3,000

Three single events are recommended for the three discharge notifications.

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 \$3,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6

Violation Final Penalty Total \$6,060

This violation Final Assessed Penalty (adjusted for limits) \$6,060

Economic Benefit Worksheet

Respondent Nueces County Water Control and Improvement District No. 5
Case ID No. 41339
Req. Ent. Reference No. RN101609543
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$200	10-Jan-2011	10-Jul-2011	0.50	\$5	n/a	\$5
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$50	10-Jan-2011	10-Jul-2011	0.50	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to submit noncompliance notifications for the three discharges (\$50) and to update operational guidance and conduct employee training to ensure that noncompliance notifications are submitted as required (\$200). Date required is the date the first notification was due. 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

\$250

TOTAL

\$6

Screening Date 21-Mar-2011

Docket No. 2011-0431-MWD-E

PCW

Respondent Nueces County Water Control and Improvement District No. 5

Policy Revision 2 (September 2002)

Case ID No. 41339

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101609543

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and (5), and TPDES Permit No. WQ0011583001, Operational Requirements No. 1

Violation Description

Failed to ensure that the facility and all its systems of collection, treatment, and disposal are properly operated and maintained, as documented during an investigation beginning on January 14, 2011. Specifically, one of the two pumps for the return/waste activated sludge lift station was not working and only one side of the dual chamber chlorine contact chamber was in operation.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed protective levels as a result of this violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

31 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One quarterly event is recommended from the investigation date (January 14, 2011) to the compliance date (February 14, 2011).

Good Faith Efforts to Comply

25.0% Reduction

\$250

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

Notes

The Respondent returned to compliance by February 14, 2011.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$27

Violation Final Penalty Total \$1,770

This violation Final Assessed Penalty (adjusted for limits) \$1,770

Economic Benefit Worksheet

Respondent Nueces County Water Control and Improvement District No. 5
Case ID No. 41339
Req. Ent. Reference No. RN101609543
Media Water Quality
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

Delayed Costs

Equipment	\$4,585	14-Jan-2011	14-Feb-2011	0.08	\$1	\$26	\$27
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Cost provided by the Respondent to make repairs to the lift station pumps (\$4,356.30) and the chlorine contact chamber (\$228.53). Date required is the date of the investigation. Final date is the date all repairs were completed.

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

\$4,585

TOTAL

\$27

Screening Date 21-Mar-2011

Docket No. 2011-0431-MWD-E

PCW

Respondent Nueces County Water Control and Improvement District No. 5

Policy Revision 2 (September 2002)

Case ID No. 41339

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101609543

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code §§ 30.350(d) and 305.125(1) and TPDES Permit No. WQ0011583001, Other Requirements No. 1

Violation Description

Failed to employ or contract with a licensed operator, as documented during an investigation beginning on January 14, 2011. Specifically, from January 12, 2011, to January 14, 2011, there was no operator employed or contracted to maintain the Facility.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

	Major	Moderate	Minor
Falsification			

Percent 0%

Matrix Notes

Operating the Facility without an operator may not allow for the proper maintenance and operation of the Facility's equipment. As a result, human health and the environment will or could be exposed to significant amounts of pollutants which would exceed protective levels.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

2 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One monthly event is recommended from January 12, 2011, to the date of compliance (January 14, 2011).

Good Faith Efforts to Comply

25.0% Reduction

\$625

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

Notes The Respondent returned to compliance by January 14, 2011.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$201

Violation Final Penalty Total \$4,425

This violation Final Assessed Penalty (adjusted for limits) \$4,425

Economic Benefit Worksheet

Respondent Nueces County Water Control and Improvement District No. 5
Case ID No. 41339
Req. Ent. Reference No. RN101609543
Media Water Quality
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel	\$35,000	12-Jan-2011	14-Jan-2011	0.01	\$10	\$192	\$201
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

Costs avoided by failing to have an operator employed or contracted with the Facility for two days. Date required is the first date the Facility was without an operator. Final date is the date the Facility contracted with a licensed operator.

Approx. Cost of Compliance	\$35,000	TOTAL	\$201
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Screening Date 21-Mar-2011

Docket No. 2011-0431-MWD-E

PCW

Respondent Nueces County Water Control and Improvement District No. 5

Policy Revision 2 (September 2002)

Case ID No. 41339

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101609543

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number 6

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0011583001, Effluent Limitations and Monitoring Requirements Nos. 1, 2, and 6

Violation Description Failed to maintain compliance with permitted effluent limitations, as documented during an investigation beginning January 14, 2011. Specifically, grab samples taken during the investigation documented noncompliance with several effluent parameters, as shown in the following table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		X		25%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment has been exposed to significant amounts of pollutants that do not exceed protective levels as a result of these discharges.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 4

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One monthly event is recommended based on documentation of the violation during the investigation.

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 \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$124

Violation Final Penalty Total \$5,050

This violation Final Assessed Penalty (adjusted for limits) \$5,050

Economic Benefit Worksheet

Respondent Nueces County Water Control and Improvement District No. 5
Case ID No. 41339
Req. Ent. Reference No. RN101609543
Media Water Quality
Violation No. 6

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)	\$5,000	14-Jan-2011	14-Jul-2011	0.50	\$124	n/a	\$124

Notes for DELAYED costs

Estimated cost to determine the cause of noncompliance and make adjustments to the Facility to return to compliance with permitted effluent limitations. Date required is the date of the investigation. Final date is the expected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$124

Nueces County Water Control and Improvement District No. 5
 TPDES Permit No. WQ0011583001
 Docket No. 2011-0431-MWD-E

Sample Date	TSS Single Grab Concentration (Limit 60 mg/L)	Chlorine Residual Concentration (min. 1.0 mg/L, max. 4.0 mg/L)	Dissolved Oxygen Concentration (min. 4.0 mg/L)	BOD Single Grab Concentration (Limit 35 mg/L)
01/14/2011	compliant	>8.8	Not sampled	53
01/15/2011	Not sampled	>8.8	2.33	Not sampled
01/16/2011	280	4.2	2.12	compliant
01/17/2011	compliant	0.05	compliant	56

TSS = total suspended solids

min.=minimum

BOD= biochemical oxygen demand

max.=maximum

mg/L = milligrams per liter

Compliance History

Customer/Respondent/Owner-Operator:	CN600738645 Nueces County Water Control and Improvement District No. 5	Classification: AVERAGE	Rating: 6.16
Regulated Entity:	RN101609543 BANQUETE PLANT	Classification: AVERAGE	Site Rating: 6.16

ID Number(s):	WASTEWATER PERMIT		WQ0011583001
	WASTEWATER EPA ID		TX0054291
	WASTEWATER LICENSING LICENSE		WQ0011583001

Location: Located at the crossing of Banquete Creek and CR 40, Approx. 1.25 mi east of FM 666 and 0.5 mi south of SH 44, Nueces Co., Tx

TCEQ Region: REGION 14 - CORPUS CHRISTI

Date Compliance History Prepared: March 21, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 21, 2006 to March 21, 2011

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

Name: Evette Alvarado Phone: (512) 239 - 2573

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: 08/30/2010 ADMINORDER 2010-0226-MLM-E

Classification: Minor

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

Rqmt Prov: Operational Requirements 1. (page 9) PERMIT

Description: Failure to ensure that the facility and all its systems of collection, treatment, and disposal are properly operated and maintained.

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Rqmt Prov: Sludge Provisions Sec. III. G. (page 22) PERMIT

Description: Failure to submit the annual sludge report for the monitoring period ending July 31, 2009, by September 1, 2009.

Classification: Minor

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

Rqmt Prov: Final Effluent Limitations 2. (page 2) PERMIT

Description: Failure to maintain compliance with permitted effluent limits for chlorine residual.

Classification: Minor

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

Rqmt Prov: Monit. and Reporting Req. 3.b PERMIT

Description: Failure to retain records of monitoring and reporting, including calibration records, at the

Facility.

Classification: Minor

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

Rqmt Prov: Monitoring and Reporting 7.(d) (page 6) PERMIT

Description: Failure to report all effluent limitation violations on the approved self-report form.

Classification: Minor

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

30 TAC Chapter 319, SubChapter A 319.11(c)

Rqmt Prov: Mon. and Reporting Req. No. 2.a PERMIT

Description: Failure to analyze effluents according to test methods specified in 40 CFR Part 136 or more recent editions of Standard Methods for the Examination of Water and Wastewater.

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: Eff. Lim. and Mon. Req. No. 4 PERMIT

Permit Conditions No. 2.d PERMIT

Description: Failure to prevent a discharge of solids into the receiving stream.

Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter A 330.15(a)

Description: Failure to prevent the unauthorized transportation and disposal of municipal solid waste.

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

N/A

C. Chronic excessive emissions events.

N/A

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

1	02/20/2007	(537381)
2	07/14/2010	(572998)
3	02/06/2007	(581802)
4	03/19/2007	(581804)
5	04/17/2006	(581806)
6	06/04/2007	(581809)
7	07/09/2007	(581811)
8	11/13/2006	(581818)
9	12/11/2006	(581820)
10	01/08/2007	(581821)
11	09/17/2007	(608231)
12	10/15/2007	(608232)
13	08/25/2009	(762876)
14	02/19/2008	(770075)
15	02/18/2009	(770076)
16	03/23/2009	(770077)
17	03/21/2008	(770078)

18 04/16/2007 (770079)
19 04/14/2008 (770080)
20 04/20/2009 (770081)
21 05/10/2007 (770082)
22 05/15/2008 (770083)
23 06/16/2008 (770084)
24 07/11/2008 (770085)
25 08/15/2007 (770086)
26 08/18/2008 (770087)
27 09/18/2006 (770088)
28 09/15/2008 (770089)
29 10/16/2006 (770090)
30 10/16/2008 (770091)
31 11/13/2007 (770092)
32 11/17/2008 (770093)
33 01/03/2008 (770094)
34 12/15/2008 (770095)
35 01/12/2008 (770096)
36 01/22/2009 (770097)
37 12/16/2009 (784103)
38 02/04/2010 (789098)
39 07/20/2009 (809879)
40 11/30/2009 (827849)
41 03/15/2010 (832716)
42 04/22/2010 (832717)
43 05/17/2010 (832718)
44 07/09/2010 (845208)
45 07/09/2010 (845209)
46 07/09/2010 (845210)
47 06/14/2010 (846844)
48 07/19/2010 (867549)

49 08/12/2010 (867550)
 50 10/22/2010 (870654)
 51 09/14/2010 (874544)
 52 11/04/2010 (882124)
 53 12/08/2010 (888593)
 54 02/28/2011 (892983)
 55 12/13/2010 (896947)

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

Date: 09/30/2006 (770090) CN600738645
 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: 02/21/2007 (537381) CN600738645
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Interim Effluent Limitations, No 2, Pg 2 PERMIT
 Description: Failure to operate the facility to maintain compliance with the permitted effluent limitations.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Interim Effluent Limitations, No 1, Pg 2 PERMIT
 Description: Failure to comply with the daily average flow effluent limitation.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)
 Monitoring Requirements, No 3(c), Pg 5 PERMIT
 Description: Failure to maintain complete records of monitoring activities.

Date: 06/30/2007 (581811) CN600738645
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter

Date: 07/31/2007 (770086) CN600738645
 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: 01/31/2008 (770075) CN600738645
 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: 07/31/2008 (770087) CN600738645
 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 (770089) CN600738645
 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 (770091) CN600738645
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 (770093) CN600738645
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 (770095) CN600738645
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 (770097) CN600738645
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 (770076) CN600738645
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 (770077) CN600738645
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: 08/25/2009 (762876) CN600738645
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(5)
Operational Requirements 1. (page 9) PERMIT
Description: Failure to ensure that the facility and all its systems of collection, treatment, and disposal are properly operated and maintained.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Sludge Provisions Sec. III. G. (page 22) PERMIT
Description: Failure to submit the annual sludge report for the monitoring period ending July 31, 2009, by September 1, 2009.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
Operational Requirements 1. (page 9) PERMIT
Description: Failure to at times ensure that oxidation ditch is properly operated and maintained.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
Operational Requirements 1. (page 9) PERMIT
Description: Failure to at all times ensure that the clarifier is properly operated and maintained.

Self Report? NO Classification: Minor
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
30 TAC Chapter 305, SubChapter F 305.125(1)

Final Effluent Limitations 2. (page 2) PERMIT
 Description: Failure to maintain compliance with permitted effluent limits for chlorine residual.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Final Effluent Limitations 6. (page 2) PERMIT

Description: Failure to ensure that the effluent contains a minimum dissolved oxygen of 4.0 mg/L.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 319, SubChapter A 319.7(c)
 Monit. and Reporting Req. 3.b PERMIT

Description: Failure to retain records of monitoring and reporting, including calibration records, at the Facility.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Monitoring and Reporting 7.(d) (page 6) PERMIT

Description: Failure to report all effluent limitation violations on the approved self-report form.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 305, SubChapter F 305.128
 Monitoring and Reporting 10. (page 6) PERMIT

Description: Failure to ensure all reports and other information requested from the executive director are signed by the person and in the manner required by 30 TAC § 305.128 (relating to Signatories to Reports).
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 319, SubChapter A 319.11(c)
 Mon. and Reporting Req. No. 2.a PERMIT

Description: Failure to analyze effluents according to test methods specified in 40 CFR Part 136 or more recent editions of Standard Methods for the Examination of Water and Wastewater.

Date: 11/30/2009 (827849) CN600738645
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 305, SubChapter F 305.125(17)

Description: NON-RPT VIOS FOR MONIT PER OR PIPE
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 305, SubChapter F 305.125(17)

Description: NON-RPT VIOS FOR MONIT PER OR PIPE
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 305, SubChapter F 305.125(17)

Description: NON-RPT VIOS FOR MONIT PER OR PIPE
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 305, SubChapter F 305.125(17)

Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Date: 02/28/2010 (832716) CN600738645
 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	§	
NUECES COUNTY WATER	§	TEXAS COMMISSION ON
CONTROL AND IMPROVEMENT	§	
DISTRICT NO. 5	§	
RN101609543	§	ENVIRONMENTAL QUALITY

**AGREED ORDER
DOCKET NO. 2011-0431-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 Nueces County Water Control and Improvement District No. 5 (“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 municipal wastewater treatment facility located at the crossing of Banquette Creek and County Road 40, approximately 1.25 miles east of

Farm-to-Market Road 666 and 0.5 mile south of State Highway 44 in Nueces 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 an investigation beginning on January 14, 2011, TCEQ staff observed wastewater solids in Banquete Creek downstream of the Facility's outfall. TCEQ staff documented that wastewater solids and sludge had washed out of the clarifier and into Banquete Creek between January 13 and January 16, 2011.
4. During an investigation beginning on January 14, 2011, TCEQ staff documented evidence of a discharge of wastewater from the headworks structure at the Facility and observed a discharge of sludge from the chlorine contact chamber.
5. During an investigation beginning on January 14, 2011, TCEQ staff documented that notification of the January 9, 2011, discharge was not made orally or by fax within 24 hours, nor was written notification of the discharges that occurred on or about January 9, and on January 15, and 16, 2011, made within five working days.
6. During an investigation beginning on January 14, 2011, TCEQ staff documented that one of the two pumps for the return/waste activated sludge lift station was not working and only one side of the dual chamber chlorine contact chamber was in operation.
7. During an investigation beginning on January 14, 2011, TCEQ staff documented that the Facility had been without an operator from January 12, 2011, to January 14, 2011.
8. During an investigation beginning on January 14, 2011, TCEQ staff documented noncompliance with several effluent parameters, as determined by grab samples and shown in the following table:

Sample Date	TSS Single Grab Concentration (Limit 60 mg/L)	Chlorine Residual Concentration (min. 1.0 mg/L, max. 4.0 mg/L)	Dissolved Oxygen Concentration (min. 4.0 mg/L)	BOD Single Grab Concentration (Limit 35 mg/L)
01/14/2011	compliant	>8.8	Not sampled	53
01/15/2011	Not sampled	>8.8	2.33	Not sampled
01/16/2011	280	4.2	2.12	compliant
01/17/2011	compliant	0.05	compliant	56

TSS = total suspended solids

min.=minimum

BOD₅= five-day biochemical oxygen demand

max.=maximum

mg/L = milligrams per liter

9. The Respondent received notice of the violations on March 1, 2011.
10. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. By January 14, 2011, contracted with a licensed operator to maintain and operate the Facility;
 - b. By January 16, 2011, removed the wastewater solids from Banquette Creek;
 - c. By February 14, 2011, completed repairs to the chlorinators in the chlorine contact chamber and the pump at the Facility's lift station; and
 - d. By June 2, 2011, removed any remaining wastewater solids and sludge from the area around the headworks of the Facility and the area around the chlorine contact chamber.

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 ensure that the facility and all its systems of collection, treatment, and disposal are properly operated and maintained, which led to a discharge into water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1) and (5), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011583001, Permit Conditions No. 2.d and Operational Requirements No. 1.
3. As evidenced by Findings of Fact No. 4, the Respondent failed to prevent the unauthorized discharge of wastewater and sludge into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0011583001, Permit Conditions Nos. 2.d and 2.g.
4. As evidenced by Findings of Fact No. 5, the Respondent failed to report a noncompliance to the TCEQ regional office either orally or by fax within 24 hours of becoming aware of the noncompliance, followed by a written submission within five working days, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (9)(A), and TPDES Permit No. WQ0011583001, Monitoring and Reporting Requirements No. 7.a.
5. As evidenced by Findings of Fact No. 6, the Respondent failed to ensure that the facility and all its systems of collection, treatment, and disposal are properly operated and maintained, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (5), and TPDES Permit No. WQ0011583001, Operational Requirements No. 1.

6. As evidenced by Findings of Fact No. 7, the Respondent failed to employ or contract with a licensed operator, in violation of 30 TEX. ADMIN. CODE §§ 30.350(d) and 305.125(1) and TPDES Permit No. WQ0011583001, Other Requirements No. 1.
7. As evidenced by Findings of Fact No. 8, the Respondent failed to maintain compliance with permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0011583001, Effluent Limitations and Monitoring Requirements Nos. 1, 2, and 6.
8. 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.
9. An administrative penalty in the amount of Eighty-Seven Thousand Six Hundred Five Dollars (\$87,605) 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 Financial Assurance Section of the Commission's Financial Administration Division reviewed financial documentation submitted by the Respondent and determined that the Respondent is unable to pay part of the administrative penalty. Therefore, Sixty-Two Thousand Seven Hundred Thirty Dollars (\$62,730) of the penalty 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, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The Respondent has paid Six Hundred Ninety Dollars (\$690) of the undeferred administrative penalty. The remaining amount of Twenty Four Thousand One Hundred Eighty-Five Dollars (\$24,185) of the administrative penalty shall be payable in 35 monthly payments of Six Hundred Ninety-One Dollars (\$691) 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. 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 Eighty-Seven Thousand Six Hundred Five Dollars (\$87,605) as set forth in Section II, Paragraph 9 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: Nueces County Water Control and Improvement District No. 5, Docket No. 2011-0431-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 30 days after the effective date of this Agreed Order, update operational guidance and conduct employee training to ensure that noncompliance notifications are submitted as required, in accordance with TPDES Permit No. WQ0011583001, Monitoring and Reporting Requirements No. 7.a;
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a, in accordance with Ordering Provision No. 2.e;
 - c. Within 90 days after the effective date of this Agreed Order;
 - i. Develop and implement operation and maintenance practices designed to prevent solids accumulation in the Facility and future discharges from the clarifier, the headworks, and the chlorine contact chamber;
 - ii. Submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0011583001, 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.

- d. Within 105 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.c.i, in accordance with Ordering Provision No. 2.e; and
- e. The certification required by Ordering Provision Nos. 2.b, 2.c.ii, and 2.d shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Water Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

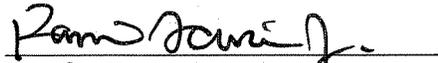
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any 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


For the Executive Director

6/4/12
Date

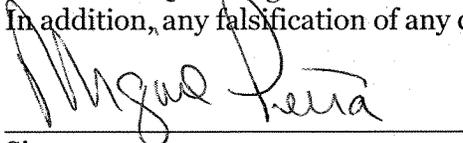
I, the undersigned, have read and understand the attached Agreed Order in the matter of Nueces County Water Control and Improvement District No. 5. I am authorized to agree to the attached Agreed Order on behalf of Nueces County Water Control and Improvement District No. 5, and do agree to the specified 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, Nueces County Water Control and Improvement District No. 5 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.


Signature

1-28-12
Date

Miguel Pena
Name (Printed or typed)
Authorized Representative of
Nueces County Water Control and Improvement District No. 5

Board President
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.