

**Executive Summary – Enforcement Matter – Case No. 46744
Livingston Care Associates, Inc. and Polk Health Holdings LLC
RN101718765
Docket No. 2013-0834-MWD-E**

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

Timberwood Nursing & Rehabilitation Center WWTF, 4001 Highway 59 North, on the west side of U.S. Highway 59 approximately 3.5 miles northeast of Livingston and south of the town of Marston, Polk County

Type of Operation:

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: October 4, 2013

Comments Received: No

Penalty Information

Total Penalty Assessed: \$8,914

Amount Deferred for Expedited Settlement: \$1,782

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$7,132

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - High

Site/RN - High

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: January 15, 2013

**Executive Summary – Enforcement Matter – Case No. 46744
Livingston Care Associates, Inc. and Polk Health Holdings LLC
RN101718765
Docket No. 2013-0834-MWD-E**

Date(s) of NOE(s): March 15, 2013

Violation Information

1. Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state. Specifically, sludge was documented in the receiving stream. Samples collected at the outfall and downstream indicated elevated levels of pollutants (including ammonia, chemical oxygen demand, orthophosphate, phosphorus, total kjeldahl nitrogen, and total organic compounds) [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1) and (4), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013388001, Permit Conditions No. 2.d.].
2. Failed to ensure that all systems of collection, treatment, and disposal are properly operated and maintained. Specifically, the mixed liquor volatile suspended solids to mixed liquor suspended solids ratio was outside the recommended range of 70-80% (87%), the sludge volume index was outside the range of 70-150 (45), and the recommended sludge blanket depth was greater than 25% (30%) [30 TEX. ADMIN. CODE § 305.125(1) and TPDES Permit No. WQ0013388001, Operational Requirements No. 1].
3. Failed to monitor effluent at the monitoring frequency specified in the permit. Specifically, flow is not being monitored at the minimum frequency as required [30 TEX. ADMIN. CODE §§ 305.125(1) and (11)(A), 319.5(b), and TPDES Permit No. WQ0013388001 Effluent Limitations and Monitoring Requirements No. 1].
4. Failed to ensure that all systems of collection, treatment, and disposal are properly operated and maintained. Specifically, the distribution box between the influent lift station and the aeration basin was corroded and damaged, causing the flow to leak from the box and back into the lift station [30 TEX. ADMIN. CODE § 305.125(1) and TPDES Permit No. WQ0013388001, Operational Requirements No. 1].
5. Failed to comply with the permitted effluent limitations. Specifically, grab samples were collected and the chlorine residual value was less than the limit of 1.0 milligrams per liter (0.8 mg/L) [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0013388001 Effluent Limitations and Monitoring Requirements No. 2].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondents have implemented the following corrective measures:

- a. By January 31, 2013, evaluated the process control procedures and documentation and returned to compliance with the TPDES Permit No. WQ0013388001 effluent limitations for chlorine residuals and flow monitoring requirements;
- b. By February 7, 2013, repaired the flow distribution box; and

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RN101718765
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c. By February 26, 2013, cleaned, vacuumed, and disposed of the sludge in the receiving stream.

Technical Requirements:

Respondents shall undertake the following technical requirements:

- a. Within 30 days, develop and begin implementing a solids management plan (“SMP”). The SMP shall identify the appropriate range of solids to be maintained throughout the treatment units at the Facility and outline a program of internal process control testing to monitor the efficiency of the wastewater treatment and to maintain the proper solids balance at the Facility. The SMP shall be prepared by a Texas registered professional engineer or an “A” TCEQ Certified Wastewater Operator; and
- b. Within 45 days, submit written certification demonstrating compliance with Ordering Provision a.

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: Jacquelyn Green, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2587; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondents: Tim Burningham, Administrator, Livingston Care Associates, Inc., 4001 U.S. Highway 59 North, Livingston, Texas 77351

Gregory Stapley, Executive Vice President, The Ensign Group, Inc. Sole Member of Polk Health Holdings, LLC., 4001 U.S. Highway 59 North, Livingston, Texas 77351

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	29-Apr-2013	Screening	29-Apr-2013	EPA Due	
	PCW	29-Apr-2013				

RESPONDENT/FACILITY INFORMATION			
Respondent	Livingston Care Associates, Inc. and Polk Health Holdings LLC		
Reg. Ent. Ref. No.	RN101718765		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION			
Inf./Case ID No.	46744	No. of Violations	5
Docket No.	2013-0834-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jacquelyn Green
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$12,750
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	-10.0% Enhancement	Subtotals 2, 3, & 7	-\$1,275
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Notes	Reduction for high performer classification.		
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondents do not meet the culpability criteria.		
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$2,561
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$356	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$10,473	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,914
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes			
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Final Penalty Amount	\$8,914
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,914
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DEFERRAL	20.0% Reduction	Adjustment	-\$1,782
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral offered for expedited settlement.		
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PAYABLE PENALTY	\$7,132
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Screening Date 29-Apr-2013

Docket No. 2013-0834-MWD-E

PCW

Respondent Livingston Care Associates, Inc. and Polk Health I

Policy Revision 3 (September 2011)

Case ID No. 46744

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101718765

Media [Statute] Water Quality

Enf. Coordinator Jacquelyn Green

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>)	0	0%
	Other written NOVs	0	0%
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	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for high performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -10%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -10%

Screening Date 29-Apr-2013

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PCW

Respondent Livingston Care Associates, Inc. and Polk Health Holdings LLC

Policy Revision 3 (September 2011)

Case ID No. 46744

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101718765

Media [Statute] Water Quality

Enf. Coordinator Jacquelyn Green

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1) and (4), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013388001 Permit Conditions No. 2.d

Violation Description Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state. Specifically, sludge was documented in the receiving stream. Samples collected at the outfall and downstream indicated elevated levels of pollutants (including ammonia, chemical oxygen demand, orthophosphate, phosphorus, total kjeldahl nitrogen, and total organic compounds).

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		X		15.0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

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

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 2 42 Number of violation days

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$7,500

Two monthly events are recommended from the date of the investigation (January 15, 2013) to the date of compliance (February 26, 2013).

Good Faith Efforts to Comply

25.0% Reduction

\$1,875

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

Notes The Respondents came into compliance on February 26, 2013.

Violation Subtotal \$5,625

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$9

Violation Final Penalty Total \$4,875

This violation Final Assessed Penalty (adjusted for limits) \$4,875

Economic Benefit Worksheet

Respondent Livingston Care Associates, Inc. and Polk Health Holdings LLC
Case ID No. 46744
Reg. Ent. Reference No. RN101718765
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,618	15-Jan-2013	26-Feb-2013	0.12	\$9	n/a	\$9

Notes for DELAYED costs

Actual cost to remove and dispose of the sludge from the receiving stream. Date required is the investigation date. 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

\$1,618

TOTAL

\$9

Screening Date 29-Apr-2013

Docket No. 2013-0834-MWD-E

PCW

Respondent Livingston Care Associates, Inc. and Polk Health Holdings LLC

Policy Revision 3 (September 2011)

Case ID No. 46744

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101718765

Media [Statute] Water Quality

Enf. Coordinator Jacquelyn Green

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TPDES Permit No. WQ0013388001 Operational Requirements No. 1

Violation Description Failed to ensure that all systems of collection, treatment, and disposal are properly operated and maintained. Specifically, the mixed liquor volatile suspended solids to mixed liquor suspended solids ratio was outside the recommended range of 70-80% (87%), the sludge volume index was outside the range of 70-150 (45), and the recommended sludge blanket depth was greater than 25% (30%).

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				5.0%
	Potential		x		

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0.0%

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

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 2 Number of violation days 104

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

Violation Base Penalty \$2,500

Two quarterly events are recommended from the investigation date (January 15, 2013) to the screening date (April 29, 2013).

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 Respondents do 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 \$344

Violation Final Penalty Total \$2,250

This violation Final Assessed Penalty (adjusted for limits) \$2,250

Economic Benefit Worksheet

Respondent Livingston Care Associates, Inc. and Polk Health Holdings LLC
Case ID No. 46744
Reg. Ent. Reference No. RN101718765
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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$8,000	15-Jan-2013	25-Nov-2013	0.86	\$344	n/a	\$344

Notes for DELAYED costs

Estimated cost to develop and implement a solids management plan prepared by a professional engineer or a licensed A wastewater operator. Date required is the investigation date and final date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$8,000

TOTAL

\$344

Screening Date 29-Apr-2013

Docket No. 2013-0834-MWD-E

PCW

Respondent Livingston Care Associates, Inc. and Polk Health Holdings LLC

Policy Revision 3 (September 2011)

Case ID No. 46744

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101718765

Media [Statute] Water Quality

Enf. Coordinator Jacquelyn Green

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(1) and (11)(A), 319.5(b), and TPDES Permit No. WQ0013388001 Effluent Limitations and Monitoring Requirements No. 1

Violation Description Failed to monitor effluent at the monitoring frequency specified in the permit, as documented during an investigation conducted on January 15, 2013. Specifically, flow is not being monitored at the minimum frequency as required.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 3.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$24,250

\$750

Violation Events

Number of Violation Events 1 Number of violation days 16

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$750

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$187

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

Notes The Respondents came into compliance on January 31, 2013.

Violation Subtotal \$563

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$488

This violation Final Assessed Penalty (adjusted for limits) \$488

Economic Benefit Worksheet

Respondent Livingston Care Associates, Inc. and Polk Health Holdings LLC
Case ID No. 46744
Reg. Ent. Reference No. RN101718765
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
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	\$25	15-Jan-2013	31-Jan-2013	0.04	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$250	15-Jan-2013	31-Jan-2013	0.04	\$1	n/a	\$1

Notes for DELAYED costs

Estimated costs to begin monitoring effluent at the frequency specified in the permit (\$5 a sample, five times a week) and to update procedures and train Facility personnel to ensure that sampling is performed at the minimum frequency. Date required is the investigation date. 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

\$275

TOTAL

\$1

Screening Date 29-Apr-2013

Docket No. 2013-0834-MWD-E

PCW

Respondent Livingston Care Associates, Inc. and Polk Health Holdings LLC

Policy Revision 3 (September 2011)

Case ID No. 46744

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101718765

Media [Statute] Water Quality

Enf. Coordinator Jacquelyn Green

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1) and TPDES Permit No. WQ0013388001 Operational Requirements No. 1

Violation Description Failed to ensure that all systems of collection, treatment, and disposal are properly operated and maintained. Specifically, the distribution box between the influent lift station and the aeration basin was corroded and damaged, causing the flow to leak from the box and back into the lift station.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 3.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$24,250

\$750

Violation Events

Number of Violation Events 1

23 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$750

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$187

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

Notes

The Respondents came into compliance on February 7, 2013.

Violation Subtotal \$563

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$488

This violation Final Assessed Penalty (adjusted for limits) \$488

Economic Benefit Worksheet

Respondent Livingston Care Associates, Inc. and Polk Health Holdings LLC
Case ID No. 46744
Reg. Ent. Reference No. RN101718765
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
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$80	15-Jan-2013	7-Feb-2013	0.06	\$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

Actual cost to repair the lift station distribution box. Date required is the investigation date and the 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

\$80

TOTAL

\$0

Screening Date 29-Apr-2013

Docket No. 2013-0834-MWD-E

PCW

Respondent Livingston Care Associates, Inc. and Polk Health Holdings LLC

Policy Revision 3 (September 2011)

Case ID No. 46744

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101718765

Media [Statute] Water Quality

Enf. Coordinator Jacquelyn Green

Violation Number 5

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0013388001 Effluent Limitations and Monitoring Requirements No. 2

Violation Description

Failed to comply with the permitted effluent limitations, as documented during an investigation conducted on January 15, 2013. Specifically, grab samples were collected and the chlorine residual value was less than the limit of 1.0 milligrams per liter ("mg/L") (0.8 mg/L).

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 5.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

16 Number of violation days

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

Violation Base Penalty \$1,250

One quarterly event is recommended from the investigation date (January 15, 2013) to the date of compliance (January 31, 2013).

Good Faith Efforts to Comply

25.0% Reduction

\$312

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

Notes The Respondents came into compliance on January 31, 2013.

Violation Subtotal \$938

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$813

This violation Final Assessed Penalty (adjusted for limits) \$813

Economic Benefit Worksheet

Respondent Livingston Care Associates, Inc. and Polk Health Holdings LLC
Case ID No. 46744
Reg. Ent. Reference No. RN101718765
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
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$500	15-Jan-2013	31-Jan-2013	0.04	\$0	\$1	\$2
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

Estimated cost to evaluate the cause of non-compliance and to implement corrective actions. Date required is the investigation date and final date is the 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

\$500

TOTAL

\$2



Compliance History Report

PUBLISHED Compliance History Report for CN603069345, RN101718765, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN603069345, Livingston Care Associates, Inc. **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN101718765, TIMBERWOOD NURSING & REHABILITATION CENTER **Classification:** HIGH **Rating:** 0.00

Complexity Points: 4 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 4001 HIGHWAY 59 NORTH, ON THE WEST SIDE OF UNITED STATES HIGHWAY 59 APPROXIMATELY 3.5 MILES NORTHEAST OF LIVINGSTON AND SOUTH OF MARSTON, POLK COUNTY, TEXAS

TCEQ Region: REGION 10 - BEAUMONT

ID Number(s):
WASTEWATER PERMIT WQ0013388001 **WASTEWATER EPA ID** TX0104213
WASTEWATER LICENSING LICENSE WQ0013388001

Compliance History Period: September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

Date Compliance History Report Prepared: May 08, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: May 8, 2008 to May 8, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Jacquelyn Green **Phone:** (512) 239-2587

Site and Owner/Operator History:

- 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** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

- A. Final Orders, court judgments, and consent decrees:**
N/A
- B. Criminal convictions:**
N/A
- C. Chronic excessive emissions events:**
N/A
- D. The approval dates of investigations (CCEDS Inv. Track. No.):**
- | | | |
|--------|--------------------|----------|
| Item 1 | June 02, 2008 | (716402) |
| Item 2 | June 12, 2008 | (716403) |
| Item 3 | July 07, 2008 | (716404) |
| Item 4 | August 21, 2008 | (716405) |
| Item 5 | September 04, 2008 | (716406) |
| Item 6 | October 22, 2008 | (731867) |
| Item 7 | November 12, 2008 | (731868) |
| Item 8 | December 15, 2008 | (731869) |

Item 9	January 29, 2009	(755274)
Item 10	February 27, 2009	(755273)
Item 11	April 09, 2009	(772368)
Item 12	April 27, 2009	(772369)
Item 13	May 22, 2009	(772370)
Item 14	June 26, 2009	(817117)
Item 15	July 30, 2009	(817118)
Item 16	August 31, 2009	(817119)
Item 17	October 06, 2009	(817120)
Item 18	November 16, 2009	(817121)
Item 19	December 15, 2009	(817122)
Item 20	January 11, 2010	(817123)
Item 21	February 08, 2010	(817124)
Item 22	March 08, 2010	(817116)
Item 23	April 09, 2010	(835227)
Item 24	May 14, 2010	(835228)
Item 25	May 31, 2010	(862000)
Item 26	June 07, 2010	(845347)
Item 27	June 30, 2010	(862001)
Item 28	September 07, 2010	(875469)
Item 29	October 01, 2010	(883013)
Item 30	November 01, 2010	(889429)
Item 31	November 29, 2010	(889430)
Item 32	December 29, 2010	(897794)
Item 33	February 02, 2011	(910581)
Item 34	March 10, 2011	(917841)
Item 35	May 13, 2011	(939539)
Item 36	June 06, 2011	(946949)
Item 37	July 11, 2011	(954210)
Item 38	August 01, 2011	(960788)
Item 39	August 29, 2011	(960789)
Item 40	October 24, 2011	(972854)
Item 41	November 07, 2011	(978991)
Item 42	December 02, 2011	(985828)
Item 43	January 26, 2012	(992180)
Item 44	February 13, 2012	(999495)
Item 45	March 05, 2012	(1005029)
Item 46	April 11, 2012	(1011593)
Item 47	May 09, 2012	(1017971)
Item 48	June 20, 2012	(1025713)
Item 49	July 19, 2012	(1033065)
Item 50	July 23, 2012	(1033064)
Item 51	August 24, 2012	(1039571)
Item 52	October 01, 2012	(1068654)
Item 53	October 31, 2012	(1068655)
Item 54	November 29, 2012	(1068656)
Item 55	February 13, 2013	(1082273)
Item 56	February 21, 2013	(1082272)
Item 57	February 27, 2013	(1082271)

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

Published Compliance History Report for CN603069345, RN101718765, Rating Year 2012 which includes Compliance History (CH) components from May 8, 2008, through May 8, 2013.

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

Published Compliance History Report for CN603069345, RN101718765, Rating Year 2012 which includes Compliance History (CH) components from May 8, 2008, through May 8, 2013.



Compliance History Report

PUBLISHED Compliance History Report for CN603069352, RN101718765, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN603069352, Polk Health Holdings LLC **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN101718765, TIMBERWOOD NURSING & REHABILITATION CENTER **Classification:** HIGH **Rating:** 0.00

Complexity Points: 4 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 4001 HIGHWAY 59 NORTH, ON THE WEST SIDE OF UNITED STATES HIGHWAY 59 APPROXIMATELY 3.5 MILES NORTHEAST OF LIVINGSTON AND SOUTH OF MARSTON, POLK COUNTY, TEXAS

TCEQ Region: REGION 10 - BEAUMONT

ID Number(s):
WASTEWATER PERMIT WQ0013388001 **WASTEWATER EPA ID** TX0104213
WASTEWATER LICENSING LICENSE WQ0013388001

Compliance History Period: September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

Date Compliance History Report Prepared: May 08, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: May 8, 2008 to May 8, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Jacquelyn Green **Phone:** (512) 239-2587

Site and Owner/Operator History:

- 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 for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

- A. Final Orders, court judgments, and consent decrees:**
N/A
- B. Criminal convictions:**
N/A
- C. Chronic excessive emissions events:**
N/A
- D. The approval dates of investigations (CCEDS Inv. Track. No.):**

Item 1	June 02, 2008	(716402)
Item 2	June 12, 2008	(716403)
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Item 16	August 31, 2009	(817119)
Item 17	October 06, 2009	(817120)
Item 18	November 16, 2009	(817121)
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Item 20	January 11, 2010	(817123)
Item 21	February 08, 2010	(817124)
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Item 23	April 09, 2010	(835227)
Item 24	May 14, 2010	(835228)
Item 25	May 31, 2010	(862000)
Item 26	June 07, 2010	(845347)
Item 27	June 30, 2010	(862001)
Item 28	September 07, 2010	(875469)
Item 29	October 01, 2010	(883013)
Item 30	November 01, 2010	(889429)
Item 31	November 29, 2010	(889430)
Item 32	December 29, 2010	(897794)
Item 33	February 02, 2011	(910581)
Item 34	March 10, 2011	(917841)
Item 35	May 13, 2011	(939539)
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Item 37	July 11, 2011	(954210)
Item 38	August 01, 2011	(960788)
Item 39	August 29, 2011	(960789)
Item 40	October 24, 2011	(972854)
Item 41	November 07, 2011	(978991)
Item 42	December 02, 2011	(985828)
Item 43	January 26, 2012	(992180)
Item 44	February 13, 2012	(999495)
Item 45	March 05, 2012	(1005029)
Item 46	April 11, 2012	(1011593)
Item 47	May 09, 2012	(1017971)
Item 48	June 20, 2012	(1025713)
Item 49	July 19, 2012	(1033065)
Item 50	July 23, 2012	(1033064)
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Item 52	October 01, 2012	(1068654)
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E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

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
LIVINGSTON CARE
ASSOCIATES, INC. AND POLK
HEALTH HOLDINGS LLC
RN101718765**

§
§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2013-0834-MWD-E**

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Livingston Care Associates, Inc. and Polk Health Holdings LLC ("Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents together stipulate that:

1. The Respondents own and operate a wastewater treatment facility located at 4001 Highway 59 North, on the west side of United States Highway 59 approximately 3.5 miles northeast of Livingston and south of the town of Marston in Polk County, Texas (the "Facility").
2. The Respondents have discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Executive Director and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about March 18, 2013.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Eight Thousand Nine Hundred Fourteen Dollars (\$8,914) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid Seven Thousand One Hundred Thirty-Two Dollars (\$7,132) of the administrative penalty and One Thousand Seven Hundred Eighty-Two Dollars (\$1,782) is deferred contingent upon the Respondents' 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 Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondents to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondents agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that the Respondents have implemented the following corrective measures at the Facility:
 - a. By January 31, 2013, evaluated the process control procedures and documentation and returned to compliance with the Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0013388001 effluent limitations for chlorine residuals and flow monitoring requirements;
 - b. By February 7, 2013, repaired the flow distribution box; and
 - c. By February 26, 2013, cleaned, vacuumed, and disposed of the sludge in the receiving stream.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondents has not complied with one or more of the terms or conditions in this Agreed Order.
11. 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.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondents are alleged to have:

1. Failed to prevent the unauthorized discharge of wastewater 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 (4), and TPDES Permit No. WQ0013388001, Permit Conditions No. 2.d, as documented during an investigation conducted on January 15, 2013. Specifically, sludge was documented in the receiving stream. Samples collected at the outfall and downstream indicated elevated levels of pollutants (including ammonia, chemical oxygen demand, orthophosphate, phosphorus, total kjeldahl nitrogen, and total organic compounds).
2. Failed to ensure that all systems of collection, treatment, and disposal are properly operated and maintained, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Permit No. WQ0013388001, Operational Requirements No. 1, as documented during an investigation conducted on January 15, 2013. Specifically, the mixed liquor volatile suspended solids to mixed liquor suspended solids ratio was outside the recommended range of 70-80% (87%), the sludge volume index was outside the range of 70-150 (45), and the recommended sludge blanket depth was greater than 25% (30%).
 3. Failed to monitor effluent at the monitoring frequency specified in the permit, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and (11)(A), 319.5(b), and TPDES Permit No. WQ0013388001 Effluent Limitations and Monitoring Requirements No. 1, as documented during an investigation conducted on January 15, 2013. Specifically, flow is not being monitored at the minimum frequency as required.
 4. Failed to ensure that all systems of collection, treatment, and disposal are properly operated and maintained, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and TPDES Permit No. WQ0013388001, Operational Requirements No. 1, as documented during an investigation conducted on January 15, 2013. Specifically, the distribution box between the influent lift station and the aeration basin was corroded and damaged, causing the flow to leak from the box and back into the lift station.
 5. Failed to comply with the permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0013388001 Effluent Limitations and Monitoring Requirements No. 2, as documented during an investigation conducted on January 15, 2013. Specifically, grab samples were collected and the chlorine residual value was less than the limit of 1.0 milligrams per liter ("mg/L") (0.8 mg/L).

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Livingston Care Associates, Inc. and Polk Health Holdings LLC, Docket No. 2013-0834-MWD-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. Livingston Care Associates, Inc. and Polk Health Holdings LLC are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
3. It is further ordered that the Respondents shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, develop and begin implementing a solids management plan ("SMP"). The SMP shall identify the appropriate range of solids to be maintained throughout the treatment units at the Facility and outline a program of internal process control testing to monitor the efficiency of the wastewater treatment and to maintain the proper solids balance at the Facility. The SMP shall be prepared by a Texas registered professional engineer or an "A" TCEQ Certified Wastewater Operator; and
 - b. Within 45 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 Nos. 2.a. 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

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are 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.
5. If the Respondents fail 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 Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents 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.
8. 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.

9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pamela Morris J
For the Executive Director

11/1/13
Date

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

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

[Signature]
Signature

8-6-13
Date

Jim Burningham
Name (Printed or typed)
Authorized Representative of
Livingston Care Associates, Inc.

Administrator
Title

[Signature]
Signature

08/06/2013
Date

Gregory Stapley
Name (Printed or typed)
Authorized Representative of
Polk Health Holdings LLC

E.V.P. of The Ensign Group, Inc. - sole member of Polk Health Holdings LLC
Title

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