

**SOAH DOCKET NO. 582-11-6030
TCEQ DOCKET NO. 2009-2074-MWD-E**

**EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY,
Petitioner**

VS.

**CITY OF HAWK COVE,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**EXECUTIVE DIRECTOR'S EXCEPTIONS TO THE
ADMINISTRATIVE LAW JUDGE'S PROPOSED ORDER**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE:

NOW COMES the Executive Director, by and through his attorney, Tammy L. Mitchell, and submits the following exceptions to the Administrative Law Judge's ("ALJ") Proposed Order:

1. The Executive Director respectfully requests that the ALJ's Proposed Order be amended to remove all reference to 30 TEX. ADMIN. CODE ch. 317 and the associated alleged violation. The Executive Director did not pursue this violation, an associated penalty, or related corrective measures during the evidentiary hearing. The references are found in Findings of Facts Nos. 5 and 6, Conclusion of Law No. 7, and Ordering Provision Nos. 1 and 5.a. The paragraphs following Finding of Fact No. 6 and Ordering Provision No. 5.a. should be re-numbered to account for their deletions.
2. The Executive Director respectfully requests that the ALJ's Proposed Order be amended to correct minor typographical errors in the citations for the Texas Water Code. Specifically, the spaces should be removed between the "26.121" and the "(a)." These citations are found in Findings of Fact Nos. 5 and 7, Conclusion of Law No. 7, and Ordering Provision No. 1.
3. The Executive Director respectfully requests that the ALJ's Proposed Order be amended to correct minor typographical errors in the citations for the Texas Pollution Discharge Elimination System ("TPDES") Permit. Specifically, the spaces should be removed between the "7" and the "(c)." These citations are found in Findings of Fact Nos. 5 and 9, Conclusion of Law No. 7, and Ordering Provision No. 1.
4. The Executive Director respectfully requests that the ALJ's Proposed Order be amended to correct a minor typographical error in Finding of Fact No. 14. The space between the end of the sentence and the period should be removed.
5. The Executive Director respectfully requests that the ALJ's Proposed Order be amended to convert the payments in the ALJ's proposed payment plan, as set forth in Ordering Provision No. 2, to whole dollar amounts to be consistent with previous Commission

Orders. The initial payment would be \$265.00 instead of \$256.25, and the 35 monthly payments would be \$256.00 instead of \$256.25.

6. The Executive Director respectfully requests that the ALJ's Proposed Order be amended to correct typographical errors in the internal references of the Ordering Provisions. In Ordering Provision No. 6, the reference to Ordering Provision 1 should be changed to Ordering Provision 5. In Ordering Provision No. 8, the reference to Ordering Provision 4 should be changed to Ordering Provision 7. In Ordering Provision No. 9, the reference to Ordering Provision 5 should be changed to Ordering Provision 7.

PRAYER

To the extent that the Administrative Law Judge's Proposal for Decision is inconsistent with these exceptions and recommended modifications, the Executive Director excepts to the Proposal for Decision. Copies of the Proposed Order with the recommended modifications are attached. Attachment "A" is the redline/strikeout version which clearly delineates the recommended modifications. Attachment "B" is a copy of the Proposed Order incorporating the Executive Director's recommended changes.

Respectfully submitted,
Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Stephanie Bergeron Perdue, Deputy Director
Office of Legal Services

Kathleen C. Decker, Director
Litigation Division

by 

Tammy L. Mitchell
State Bar of Texas No. 24058003
Litigation Division, MC 175
P.O. Box 13087
Austin, Texas 78711-3087
(512) 239-3400
(512) 239-3434 (FAX)

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of February, 2012, the original of the foregoing "Executive Director's Exceptions to the Administrative Law Judge's Proposed Order" ("Exceptions") were filed with the Chief Clerk, Texas Commission on Environmental Quality, Austin, Texas.

I further certify that on this day true and correct copies of the foregoing Exceptions were sent to the following persons by the method of service indicated:

Dwain Moore, Mayor
City of Hawk Cove
1585 Maria Street
Hawk Cove, Texas 75474

Via facsimile to (903) 447-5655 and
Via First Class Mail and Certified Mail,
Article No. 7002 2030 0005 7059 6851

The Honorable Rebecca S. Smith
State Office of Administrative Hearings
William P. Clements Building
300 West 15th Street, Suite 502
P.O. Box 13025
Austin, Texas 78711-3025

Electronically filed

I further certify that on this day a true and correct copy of the foregoing Exceptions were electronically submitted to the Office of the Public Interest Counsel, Texas Commission on Environmental Quality, Austin, Texas.



Tammy L. Mitchell
Attorney
Litigation Division
Texas Commission on Environmental Quality

ATTACHMENT A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**AN ORDER Assessing Administrative Penalties Against and
Requiring Corrective Action by
City of Hawk Cove
TCEQ DOCKET NO. 2009-2074-MWD-E
SOAH DOCKET NO. 582-11-6030**

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an enforcement order assessing administrative penalties against and requiring corrective action from the City of Hawk Cove (Respondent). Rebecca S. Smith, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a public hearing on this matter on January 10, 2012, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent, the Commission's Executive Director (ED), and the Office of Public Interest Counsel.

After considering the ALJ's Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

1. The City of Hawk Cove (Respondent) owns and operates a wastewater treatment facility located 3,600 feet southeast of the intersection of County Road 3613 and County Road 3608 in Hawk Cove, Hunt County, Texas (Facility).

2. During investigations conducted on July 21, 2009, and November 20, 2009, a TCEQ Dallas / Fort Worth Regional Office investigator documented that Respondent committed four violations of the TCEQ rules involving wastewater treatment facilities, the Texas Water Code, and the TPDES permit No. WQ0014522001.
3. On August 31, 2009, the ED issued a Notice of Violation to Respondent regarding the violations found during the July 21, 2009 investigation.
4. On December 8, 2009, the ED issued a Notice of Enforcement for the Facility to Respondent regarding the violations found during the July 21, 2009 investigation.
5. On March 16, 2011, the ED issued the EDPRP in accordance with Texas Water Code § 7.054, alleging that Respondent violated Texas Water Code § 26.121-(a), (c), and (e); 30 TAC §§ 305.125(1) ~~and 317.4(a)(8)~~; and Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014511001, Permit Conditions Nos. 2.d. and 2.g., Operational Requirement No. 5, and Monitoring and Reporting Requirement No. 7-(c), specifically by failing to test all backflow prevention devices annually, failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, failing to provide an effluent flow measuring device by which flow may be determined, and failing to submit effluent noncompliance notification reports.
- ~~6. Respondent violated 30 TAC § 317.4(a)(8) by failing to test the Reduced Pressure Zone backflow prevention device at the Facility within the one year period before the investigation.~~
- ~~7.6.~~ Respondent violated Texas Water Code § 26.121-(a), (c), and (e); 30 TAC § 305.125(1); and TPDES Permit No. WQ0014511001, Permit Conditions Nos. 2.d. and 2.g., by failing to

prevent the unauthorized discharge of approximately 8,000 and 4,000 gallons of wastewater from the Facility's Amy Street, Hawk Cove, Texas lift station on May 4 and 5, 2008, respectively, and of approximately 1,000 gallons of wastewater from the Facility's Dogwood Trail, Hawk Cove, Texas lift station on July 22, 2009.

~~8.7.~~ Respondent violated 30 TAC § 305.125(1) and TPDES Permit No. WQ0014511001, Operational Requirement No. 5 by not providing a staff gauge at the effluent weir at the Facility.

~~9.8.~~ Respondent violated 30 TAC § 305.125(1) and TPDES Permit No. WQ0014511001, Monitoring and Reporting Requirement No. 7-(c) by failing to submit noncompliance notification reports within five days of the City's becoming aware of effluent violations which deviated from the permitted effluent limits by more than 40 percent for the months of January through May 2009.

10. An administrative penalty of \$9,225 for the above violations takes into account culpability, economic benefit, good faith efforts to comply, compliance history, release potential, and other factors set forth in Texas Water Code § 7.053 and in the Commission's 2002 Penalty Policy.

11. On March 30, 2011, Respondent requested a contested case hearing on the allegations in the EDPRP.

12. On May 20, 2011, the case was referred to SOAH for a hearing.

13. On June 2, 2011, the Commission's Chief Clerk issued notice of the preliminary hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.

14. On June 28, 2011, the ALJ issued Order No. 1, which granted the parties' request to waive the preliminary hearing and admitted documents to establish jurisdiction.
15. The hearing on the merits was conducted on January 10, 2012, in Austin, Texas, by ALJ Rebecca S. Smith.
16. Respondent was represented at the hearing by its mayor, Dwain Moore. The ED was represented by Tammy Mitchell, attorney in TCEQ's Litigation Division. No one appeared for the Office of Public Interest Counsel.

II. CONCLUSIONS OF LAW

1. Under Texas Water Code § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
2. Under Texas Water Code § 7.052, a penalty may not exceed \$10,000 per violation, per day, for the violations at issue in this case.
3. Respondent is subject to the Commission's enforcement authority, pursuant to Texas Water Code § 7.002. Additionally, the Commission may order the violator to take corrective action, pursuant to Texas Water Code § 7.073.
4. As required by Texas Water Code § 7.055 and 30 Texas Administrative Code (TAC) §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations, or the penalties and the corrective actions proposed therein.
5. As required by Texas Government Code §§ 2001.051(1) and 2001.052; Texas Water Code § 7.058; 1 TAC § 155.401; and 30 TAC §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondent was notified of the hearing on the alleged violations and the proposed penalties.

6. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to Texas Government Code ch. 2003.
7. Based on the above Findings of Fact, Respondent violated Texas Water Code § 26.121 (a), (c), and (e); 30 TAC §§ 305.125(1)—~~and 317.4(a)(8)~~, and TPDES Permit No. WQ0014522001, Permit Conditions Nos. 2.d. and 2.g., Operational Requirement No. 5, and Monitoring and Reporting Requirement No. 7-(c).
8. In determining the amount of an administrative penalty, Texas Water Code § 7.053 requires the Commission to consider several factors including:
 - The violation’s impact or potential impact on public health and safety, natural resources and their uses, and other persons;
 - The nature, circumstances, extent, duration, and gravity of the prohibited act;
 - The history and extent of previous violations by the violator;
 - The violator’s degree of culpability, good faith, and economic benefit gained through the violation;
 - The amount necessary to deter future violations; and
 - Any other matters that justice may require.
9. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
10. Based on consideration of the above Findings of Fact, the factors set out in Texas Water Code § 7.053, and the Commission’s Penalty Policy, the Executive Director correctly calculated the penalties for the alleged violations, and a total administrative penalty of \$9,225 is justified and should be assessed against Respondent.
11. Based on the above Findings of Fact, Respondent should be required to take the corrective

action measures that the Executive Director recommends.

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. City of Hawk Cove is assessed an administrative penalty in the amount of \$9,225 for violation of Texas Water Code § 26.121-(a), (c), and (e); 30 TAC §§ 305.125(1)~~and 317.4(a)(8)~~; and TPDES Permit No. WQ0014522001, Permit Conditions Nos. 2.d. and 2.g., Operational Requirement No. 5, and Monitoring and Reporting Requirement No. 7-(c).
2. Within 30 days after the effective date of this Order, Respondent shall pay ~~\$256.25~~265.00 of the administrative penalty. The remaining amount of the administrative penalty shall be payable in 35 monthly payments of ~~\$256.25~~256.00 each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Order, including the payment schedule, the ED may, at his 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, Respondent's failure to meet the payment schedule of this Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Order.
3. The payment of this administrative penalty and City of Hawk Cove's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring

corrective actions or penalties for other violations that are not raised here.

4. All checks submitted to pay the penalty assessed by this Order shall be made out to “Texas Commission on Environmental Quality.” Administrative penalty payments shall be sent with the notation “Re: City of Hawk Cove, Docket No. 2009-2074-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 78711-30882.

5. Within 30 days from the effective date of the Commission Order, Respondent shall:

- ~~a. Perform an annual test on the reduced pressure zone backflow prevention device at the Facility;~~
- ba. Install a staff gauge at the effluent weir at the Facility; and
- eb. Develop and implement procedures to ensure noncompliance notification reports are submitted within five days of becoming aware of effluent violations which deviate from the permitted effluent limits by more than 40 percent.

6. Within 45 days after the effective date of the Commission Order, Respondent shall submit written certification of compliance with Ordering Provision 15 as described in Ordering Provision 9 below.

7. Within 90 days after the effective date of the Commission Order, Respondent shall evaluate the physical design and condition of each lift station in the Facility’s collection system. The evaluation must be prepared by a Texas registered professional engineer and must include, at a minimum, an evaluation of the pump capacity of each lift station and recommendations listed in a plan with a schedule for implementation to be completed within 365 days after the effective date of the Commission Order.

8. Within 105 days after the effective date of the Commission Order, Respondent shall submit written certification of compliance with Ordering Provision [47](#) as described in Ordering Provision 9 below.
9. Within 380 days after the effective date of the Commission Order, Respondent shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the plan required by Ordering Provision [57](#). 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 fine 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:

Sid Slocum, Water Section, Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

10. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Commission Order.
11. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
12. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Texas Government Code § 2001.144.
13. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
14. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**Bryan W. Shaw, Ph.D., Chairman
For the Commission**

ATTACHMENT B

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



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The following are parties to the proceeding: Respondent, the Commission's Executive Director (ED), and the Office of Public Interest Counsel.

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I. FINDINGS OF FACT

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2. During investigations conducted on July 21, 2009, and November 20, 2009, a TCEQ Dallas / Fort Worth Regional Office investigator documented that Respondent committed four violations of the TCEQ rules involving wastewater treatment facilities, the Texas Water Code, and the TPDES permit No. WQ0014522001.
3. On August 31, 2009, the ED issued a Notice of Violation to Respondent regarding the violations found during the July 21, 2009 investigation.
4. On December 8, 2009, the ED issued a Notice of Enforcement for the Facility to Respondent regarding the violations found during the July 21, 2009 investigation.
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6. Respondent violated Texas Water Code § 26.121(a), (c), and (e); 30 TAC § 305.125(1); and TPDES Permit No. WQ0014511001, Permit Conditions Nos. 2.d. and 2.g., by failing to prevent the unauthorized discharge of approximately 8,000 and 4,000 gallons of wastewater from the Facility's Amy Street, Hawk Cove, Texas lift station on May 4 and 5, 2008,

respectively, and of approximately 1,000 gallons of wastewater from the Facility's Dogwood Trail, Hawk Cove, Texas lift station on July 22, 2009.

7. Respondent violated 30 TAC § 305.125(1) and TPDES Permit No. WQ0014511001, Operational Requirement No. 5 by not providing a staff gauge at the effluent weir at the Facility.
8. Respondent violated 30 TAC § 305.125(1) and TPDES Permit No. WQ0014511001, Monitoring and Reporting Requirement No. 7(c) by failing to submit noncompliance notification reports within five days of the City's becoming aware of effluent violations which deviated from the permitted effluent limits by more than 40 percent for the months of January through May 2009.
10. An administrative penalty of \$9,225 for the above violations takes into account culpability, economic benefit, good faith efforts to comply, compliance history, release potential, and other factors set forth in Texas Water Code § 7.053 and in the Commission's 2002 Penalty Policy.
11. On March 30, 2011, Respondent requested a contested case hearing on the allegations in the EDPRP.
12. On May 20, 2011, the case was referred to SOAH for a hearing.
13. On June 2, 2011, the Commission's Chief Clerk issued notice of the preliminary hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.

14. On June 28, 2011, the ALJ issued Order No. 1, which granted the parties' request to waive the preliminary hearing and admitted documents to establish jurisdiction.
15. The hearing on the merits was conducted on January 10, 2012, in Austin, Texas, by ALJ Rebecca S. Smith.
16. Respondent was represented at the hearing by its mayor, Dwain Moore. The ED was represented by Tammy Mitchell, attorney in TCEQ's Litigation Division. No one appeared for the Office of Public Interest Counsel.

II. CONCLUSIONS OF LAW

1. Under Texas Water Code § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Texas Water Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.
2. Under Texas Water Code § 7.052, a penalty may not exceed \$10,000 per violation, per day, for the violations at issue in this case.
3. Respondent is subject to the Commission's enforcement authority, pursuant to Texas Water Code § 7.002. Additionally, the Commission may order the violator to take corrective action, pursuant to Texas Water Code § 7.073.
4. As required by Texas Water Code § 7.055 and 30 Texas Administrative Code (TAC) §§ 1.11 and 70.104, Respondent was notified of the EDPRP and of the opportunity to request a hearing on the alleged violations, or the penalties and the corrective actions proposed therein.
5. As required by Texas Government Code §§ 2001.051(1) and 2001.052; Texas Water Code § 7.058; 1 TAC § 155.401; and 30 TAC §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondent was notified of the hearing on the alleged violations and the proposed penalties.

6. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to Texas Government Code ch. 2003.
7. Based on the above Findings of Fact, Respondent violated Texas Water Code § 26.121 (a), (c), and (e); 30 TAC §§ 305.125(1), and TPDES Permit No. WQ0014522001, Permit Conditions Nos. 2.d. and 2.g., Operational Requirement No. 5, and Monitoring and Reporting Requirement No. 7(c).
8. In determining the amount of an administrative penalty, Texas Water Code § 7.053 requires the Commission to consider several factors including:
 - The violation's impact or potential impact on public health and safety, natural resources and their uses, and other persons;
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 - The history and extent of previous violations by the violator;
 - The violator's degree of culpability, good faith, and economic benefit gained through the violation;
 - The amount necessary to deter future violations; and
 - Any other matters that justice may require.
9. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.
10. Based on consideration of the above Findings of Fact, the factors set out in Texas Water Code § 7.053, and the Commission's Penalty Policy, the Executive Director correctly calculated the penalties for the alleged violations, and a total administrative penalty of \$9,225 is justified and should be assessed against Respondent.
11. Based on the above Findings of Fact, Respondent should be required to take the corrective

action measures that the Executive Director recommends.

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. City of Hawk Cove is assessed an administrative penalty in the amount of \$9,225 for violation of Texas Water Code § 26.121(a), (c), and (e); 30 TAC §§ 305.125(1); and TPDES Permit No. WQ0014522001, Permit Conditions Nos. 2.d. and 2.g., Operational Requirement No. 5, and Monitoring and Reporting Requirement No. 7(c).
2. Within 30 days after the effective date of this Order, Respondent shall pay \$265.00 of the administrative penalty. The remaining amount of the administrative penalty shall be payable in 35 monthly payments of \$256.00 each. The first monthly payment shall be paid within 30 days after the effective date of this Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Order, including the payment schedule, the ED may, at his 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, Respondent's failure to meet the payment schedule of this Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Order.
3. The payment of this administrative penalty and City of Hawk Cove's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring

corrective actions or penalties for other violations that are not raised here.

4. All checks submitted to pay the penalty assessed by this Order shall be made out to “Texas Commission on Environmental Quality.” Administrative penalty payments shall be sent with the notation “Re: City of Hawk Cove, Docket No. 2009-2074-MWD-E” to:

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Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-30882.

5. Within 30 days from the effective date of the Commission Order, Respondent shall:
 - a. Install a staff gauge at the effluent weir at the Facility; and
 - b. Develop and implement procedures to ensure noncompliance notification reports are submitted within five days of becoming aware of effluent violations which deviate from the permitted effluent limits by more than 40 percent.
6. Within 45 days after the effective date of the Commission Order, Respondent shall submit written certification of compliance with Ordering Provision 5 as described in Ordering Provision 9 below.
7. Within 90 days after the effective date of the Commission Order, Respondent shall evaluate the physical design and condition of each lift station in the Facility’s collection system. The evaluation must be prepared by a Texas registered professional engineer and must include, at a minimum, an evaluation of the pump capacity of each lift station and recommendations listed in a plan with a schedule for implementation to be completed within 365 days after the effective date of the Commission Order.
8. Within 105 days after the effective date of the Commission Order, Respondent shall submit written certification of compliance with Ordering Provision 7 as described in Ordering

Provision 9 below.

9. Within 380 days after the effective date of the Commission Order, Respondent shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with the plan required by Ordering Provision 7. 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 fine 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:

Sid Slocum, Water Section, Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

10. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the

Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Commission Order.

11. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
12. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Texas Government Code § 2001.144.
13. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.
14. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

**Bryan W. Shaw, Ph.D., Chairman
For the Commission**