

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0626-MWD-E **TCEQ ID:** RN103935599 **CASE NO.:** 37552

RESPONDENT NAME: City of San Benito

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: San Benito WWTP, located 0.25 mile southeast of the intersection of Farm-to-Market Road 509 and Arroy Colorado, Cameron County</p> <p>TYPE OF OPERATION: Wastewater treatment plant</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on November 9, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732 TCEQ Enforcement Coordinator: Mr. Steve Villatoro, Enforcement Division, Enforcement Team 1, MC 169, 512-239-4930; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Manuel Lara, City Manager, City of San Benito, P.O. Box 1870, San Benito, Texas 78586 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 25, 2009</p> <p>Date of NOV/NOE Relating to this Case: April 15, 2009 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>1) Failure to comply with permit effluent limits for total suspended solids, ammonia nitrogen, and carbonaceous biochemical oxygen demand [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014454001, Interim Effluent Limitations and Monitoring Requirements No. 1].</p> <p>2) Failure to collect and analyze samples for E. coli bacteria, for the monitoring periods ending November 30, 2008 and December 31, 2008. Specifically, the Respondent reported on the discharge monitoring reports that samples were taken for fecal coliform bacteria rather than for E. coli bacteria during November 2008 and December 2008 [30 TEX. ADMIN. CODE §§ 305.125(1) and 319.5(b) and TPDES Permit No. WQ0014454001, Monitoring and Reporting Requirements No.1].</p>	<p>Total Assessed: \$21,790</p> <p>Total Deferred: \$4,358 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$17,432</p> <p>Total Paid to General Revenue: \$0</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. By November 31, 2008, replaced the damaged impellers and partition wall expansion plates in the north and south aeration basins;</p> <p>b. By December 31, 2008, updated the Facility's operational guidance to ensure that the sampling for E. coli bacteria is properly accomplished; and</p> <p>c. During January 2009, began sampling for E. coli bacteria.</p> <p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See Attachment A)</p> <p>2) The Order will also require the Respondent to, within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0014454001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance.</p>

Additional ID No(s): WQ0014454001

Attachment A
Docket Number: 2009-0626-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of San Benito
Payable Penalty Amount:	Seventeen Thousand Four Hundred Thirty-Two Dollars (\$17,432)
SEP Amount:	Seventeen Thousand Four Hundred Thirty-Two Dollars (\$17,432)
Type of SEP:	Pre-approved
Third-Party Recipient:	The Rensselaerville Institute-“Self-Help Rio Grande”
Location of SEP:	Cameron County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent will contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the Third-Party Recipient will provide low income homeowners with failing on-site wastewater treatment systems or no system at all, with technical and financial assistance to install, repair, or replace those water and wastewater sewage systems. To reduce costs, the Third-Party Recipient teams with low income homeowners to solve water and wastewater problems by working together to build water and wastewater infrastructures. SEP contributions are to be used for material and labor costs.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from homes with substandard water and wastewater service.

C. Minimum Expenditure

Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

The Rensselaerville Institute
135 Paseo Del Prado, Suite 37
Edinburg, TX 78539

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear

statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ
DATES

Assigned PCW 20-Apr-2009
 Screening 9-Jul-2008 30-Apr-2009
 EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent City of San Benito
 Reg. Ent. Ref. No. RN103935599
 Facility/Site Region 15-Harlingen Major/Minor Source Major

CASE INFORMATION

Enf./Case ID No. 37552 No. of Violations 1
 Docket No. 2009-0626-MWD-E Order Type 1660
 Media Program(s) Water Quality Government/Non-Profit Yes
 Multi-Media Inf. Coordinator Steve Villatoro
 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 \$10,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 52.0% Enhancement Subtotals 2, 3, & 7 \$5,200

Notes The penalty is enhanced due to nine self-reported monthly effluent violations, one NOV with same/similar violations to those cited in this action, and one NOV without same or similar violations.

Culpability No 0.0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5 \$0

Economic Benefit 0.0% Enhancement* Subtotal 6 \$0

Total EB Amounts \$1,047
 Approx. Cost of Compliance \$12,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$15,200

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

Reduces or enhances the Final Subtotal by the Indicated percentage.

Notes

Final Penalty Amount \$15,200

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$15,200

DEFERRAL 20.0% Reduction Adjustment -\$3,040

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

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY \$12,160

Screening Date 30-Apr-2009

Docket No. 2009-0626-MWD-E

PCW

Respondent City of San Benito

Policy Revision 2 (September 2002)

Case ID No. 37552

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103935599

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	10	50%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 52%

>> **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

The penalty is enhanced due to nine self-reported monthly effluent violations, one NOV with same/similar violations to those cited in this action, and one NOV without same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 52%

Screening Date 30-Apr-2009 **Docket No.** 2009-0626-MWD-E **PCW**
Respondent City of San Benito *Policy Revision 2 (September 2002)*
Case ID No. 37552 *PCW Revision October 30, 2009*
Reg. Ent. Reference No. RN103935599
Media [Statute] Water Quality
Enf. Coordinator Steve Villatoro
Violation Number 1
Rule Cite(s) Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014454001, Interim Effluent Limitations and Monitoring Requirements No. 1
Violation Description Failed to comply with permit effluent limits, as documented during a record review conducted on March 25, 2009 and shown in the attached table.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		x		50%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes
 Flow and ammonia-nitrogen were considered to determine whether the discharged amounts of pollutants exceeded protective levels. Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events Number of violation days

mark only one with an x	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	x
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty \$10,000

Two monthly events are recommended.

Good Faith Efforts to Comply

Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	x	(mark with x)

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

Violation Subtotal \$10,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,047

Violation Final Penalty Total \$15,200

This violation Final Assessed Penalty (adjusted for limits) \$15,200

Economic Benefit Worksheet

Respondent City of San Benito
Case ID No. 37552
Reg. Ent. Reference No. RN103935599
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
Delayed Costs							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$12,000	30-Nov-2008	28-Feb-2010	1.25	\$50	\$997	\$1,047
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 replace the damaged impellers and partition wall expansion plates in the north and south aeration basins; and to determine the cause of non-compliance and to implement corrective actions. However, the manufacturer paid for repairs of damaged parts under warranty. Date required is the first date of non compliance. Final Date is expected date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$12,000	TOTAL	\$1,047
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EFFLUENT VIOLATION TABLE			
City of San Benito			
TPDES Permit No. WQ0014454001			
Docket No. 2009-0626-MWD-E			
Effluent	Limits	11/30/2008	12/31/2008
Total Ammonia Nitrogen Daily Avg. Conc.	Limit = 3 mg/L	15.3	9.4
Total Ammonia Nitrogen Daily Max. Conc.	Limit = 10 mg/L	17.8	17.6
Total Ammonia Nitrogen Daily Avg. Loading	Limit = 94 lbs/day	299.1	166.2

Max. = maximum

mg/L = milligrams per liter

Avg. = average

lbs/day = pounds per day

Conc. = concentration



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	20-Apr-2009	Screening	30-Apr-2009	EPA Due	
	PCW	8-Jul-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of San Benito
Reg. Ent. Ref. No.	RN103936599
Facility/Site Region	15-Harlingen
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37552	No. of Violations	3
Docket No.	2009-0626-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Steve Villatoro
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$4,500
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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	52.0% Enhancement	Subtotals 2, 3, & 7	\$2,340
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Notes
The penalty is enhanced due to nine self-reported monthly effluent violations, one NOV with same/similar violations to those cited in this action, and one NOV without same or similar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes
The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$250
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$1,856
Approx. Cost of Compliance \$12,700
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$6,590
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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

Final Penalty Amount \$6,590

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$6,590
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DEFERRAL	20.0% Reduction	Adjustment	-\$1,318
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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.

PAYABLE PENALTY	\$5,272
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Screening Date: 30-Apr-2009

Docket No.: 2009-0626-MWD-E

PCW

Respondent: City of San Benito

Policy Revision 2 (September 2002)

Case ID No.: 37552

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN103935599

Media [Statute]: Water Quality

Enf. Coordinator: Steve Villatoro

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	10	50%
	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	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) 52%

>> **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

The penalty is enhanced due to nine self-reported monthly effluent violations, one NOV with same/similar violations to those cited in this action, and one NOV without same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 52%

Screening Date	30-Apr-2009	Docket No.	2009-0626-MWD-E	PCW
Respondent	City of San Benito	Policy Revision 2 (September 2002)		
Case ID No.	37552	PCW Revision October 30, 2008		
Reg. Ent. Reference No.	RN103935599			
Media [Statute]	Water Quality			
Enf. Coordinator	Steve Villatoro			
Violation Number	1			
Rule Cite(s)	Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.126(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014454001, Interim Effluent Limitations and Monitoring Requirements No. 1			
Violation Description	Failed to comply with permit effluent limits, as documented during a record review conducted on March 25, 2009 and shown in the attached table.			
Base Penalty				\$10,000

>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual		X		
	Potential				Percent <input type="text" value="25%"/>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent <input type="text" value="0%"/>

Matrix Notes: Flow, carbonaceous biochemical oxygen demand, and ammonia-nitrogen were considered to determine whether the discharged amounts of pollutants exceeded protective levels. Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	X
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input type="text"/>	

Violation Base Penalty

One monthly event is recommended for the month of March 2008.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDPRP/Settlement Offer

Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	X	(mark with x)

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount Violation Final Penalty Total
 This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent: City of San Benito
Case ID No.: 37552
Reg. Ent. Reference No.: RN103935599
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
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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	\$12,000	31-Jan-2008	28-Feb-2010	2.08	\$83	\$1,664	\$1,747
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 replace the damaged Impellers and partition wall expansion plates in the north and south aeration basins; and to determine the cause of non-compliance and to implement corrective actions. However, the manufacturer paid for repairs of damaged parts under warranty. Date required is the first date of non-compliance. Final Date is 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

\$12,000

TOTAL

\$1,747

Screening Date: 30-Apr-2009	Docket No.: 2009-0626-MWD-E	PCW	
Respondent: City of San Benito	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.: 37552	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.: RN103935599			
Media [Statute]: Water Quality			
Enf. Coordinator: Steve Villatoro			
Violation Number: 2			
Rule Cite(s):	Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1) and TPDES Permit No. WQ0014454001, Interim Effluent Limitations and Monitoring Requirements No. 1		
Violation Description:	Failed to comply with permit effluent limits, as documented during a record review conducted on March 25, 2009 and shown in the attached table.		
Base Penalty:		\$10,000	
>> Environmental, Property and Human Health Matrix			
OR	Harm		
	Major	Moderate	Minor
	Actual	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Potential	<input type="checkbox"/>	<input type="checkbox"/>
		Percent:	10%
>> Programmatic Matrix			
	Major	Moderate	Minor
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		Percent:	0%
Matrix Notes:	Flow, total suspended solids, ammonia-nitrogen, and carbonaceous biochemical oxygen demand were considered to determine whether the discharged amounts of pollutants exceeded protective levels. 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 this violation.		
Adjustment:		\$9,000	
		\$1,000	
Violation Events			
Number of Violation Events:		1	Number of violation days: 31
<i>mark only one with an x</i>	daily	<input type="checkbox"/>	Violation Base Penalty: \$1,000
	weekly	<input type="checkbox"/>	
	monthly	<input type="checkbox"/>	
	quarterly	<input checked="" type="checkbox"/>	
	semiannual	<input type="checkbox"/>	
	annual	<input type="checkbox"/>	
	single event	<input type="checkbox"/>	
One quarterly event is recommended for the quarter containing the month of January 2008.			
Good Faith Efforts to Comply		0.0% Reduction	\$0
	<small>Before NOV NOV to EDRP/Settlement Offer</small>		
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>	
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>	
N/A	<input checked="" type="checkbox"/>	<small>(mark with x)</small>	
Notes:	The Respondent does not meet the good faith criteria for this violation.		
Violation Subtotal:		\$1,000	
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount:	\$0	Violation Final Penalty Total:	\$1,520
This violation Final Assessed Penalty (adjusted for limits):		\$1,520	

Economic Benefit Worksheet

Respondent: City of San Benito
Case ID No.: 37552
Reg. Ent. Reference No.: RN103936599
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				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

Economic benefit is included for violation number 1.

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 \$0

TOTAL \$0

Screening Date: 30-Apr-2009	Docket No.: 2009-0626-MWD-E	PCW		
Respondent: City of San Benito	<small>Policy Revision 2 (September 2002)</small>			
Case ID No.: 37552	<small>PCW Revision October 30, 2008</small>			
Reg. Ent. Reference No.: RN103935599				
Media [Statute]: Water Quality				
Enf. Coordinator: Steve Villatoro				
Violation Number: 3				
Rule Cite(s):	30 Tex. Admin. Code §§ 305.125(1) and 319.5(b) and TPDES Permit No. WQ0014454001, Monitoring and Reporting Requirements No.1			
Violation Description:	Failed to collect and analyze samples for E. coli bacteria, for the monitoring periods ending November 30, 2008 and December 31, 2008, as documented during a record review conducted on March 25, 2009. Specifically, the Respondent reported on the discharge monitoring reports that samples were taken for fecal coliform bacteria rather than for E. coli bacteria during November 2008 and December 2008.			
Base Penalty:		\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Percent				5%
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Percent				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:		\$9,500		
		\$500		
Violation Events				
Number of Violation Events		2	36	
		Number of violation days		
<small>mark only one with an x</small>	daily	<input type="checkbox"/>	Violation Base Penalty \$1,000	
	weekly	<input type="checkbox"/>		
	monthly	<input type="checkbox"/>		
	quarterly	<input type="checkbox"/>		
	semiannual	<input type="checkbox"/>		
	annual	<input type="checkbox"/>		
	single event	<input checked="" type="checkbox"/>		
Two single events are recommended (one event for each month).				
Good Faith Efforts to Comply		25.0% Reduction	\$250	
		<small>Before NOV NOV to EDPRP/Settlement Offer</small>		
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>		
Ordinary	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
N/A	<input type="checkbox"/>	<small>(mark with x)</small>		
Notes	The Respondent achieved compliance in January 2009.			
Violation Subtotal		\$750		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount	\$108	Violation Final Penalty Total	\$1,270	
This violation Final Assessed Penalty (adjusted for limits)		\$1,270		

Economic Benefit Worksheet

Respondent City of San Benito
Case ID No. 37562
Reg. Ent. Reference No. RN103935599
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
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	\$100	30-Nov-2008	31-Jan-2009	0.17	\$1	n/a	\$1
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 update operational guidance to ensure sampling for E. coli is conducted. Date required is the first date of non-compliance. 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	\$600	30-Nov-2008	31-Jan-2009	0.17	\$5	\$102	\$107
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

Estimated annualized cost of sampling and lab analysis required to report effluent levels (estimated at \$50 per month). Date required is the first date of noncompliance. Final date is the date of compliance.

Approx. Cost of Compliance

\$700

TOTAL

\$108

EFFLUENT VIOLATION TABLE			
City of San Benito			
TPDES Permit No. WQ0014454001			
Docket No. 2009-0626-MWD-E			
Effluent	Limits	1/31/2008	3/31/2008
Total Suspended Solids Daily Avg. Loading	Limit = 313 lbs/day	394.1	c
Total Suspended Solids Daily Avg. Conc.	Limit = 15 mg/L	21.2	c
Total Suspended Solids Daily Max. Conc.	Limit = 40 mg/L	73.3	c
Total Ammonia Nitrogen Daily Avg. Loading	Limit = 63 lbs/day	c	233.8
Total Ammonia Nitrogen Daily Avg. Conc.	Limit = 3 mg/L	c	14.3
Total Ammonia Nitrogen Daily Max. Conc.	Limit = 10 mg/L	c	29.2
CBOD Daily Avg. Loading	Limit = 209 lbs/day	234.9	c
CBOD Daily Avg. Conc.	Limit = 10 mg/L	11.6	10.8

Max. = maximum

mg/L = milligrams per liter

CBOD = carbonaceous biochemical oxygen demand

lbs/day = pounds per day

Conc. = concentration

Avg. = average

c = compliant

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600755326	City of San Benito	Classification: AVERAGE	Rating: 2.35
Regulated Entity:	RN103935599	SAN BENITO WWTP	Classification: AVERAGE	Site Rating: 2.10
ID Number(s):	WASTEWATER	PERMIT		WQ0014454001
	WASTEWATER	EPA ID		TX0125971
	WASTEWATER	PERMIT		TX0125971
Location:	0.25 mile southeast of the intersection of Farm-to-Market Road 509 and Arroyo Colorado in Cameron County, Texas			
TCEQ Region:	REGION 15 - HARLINGEN			
Date Compliance History Prepared:	April 30, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 30, 2004 to April 30, 2009			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Steve Villatoro	Phone:	512-239-4930	

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: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- 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	07/23/2007	(633657)
2	08/24/2007	(566818)
3	09/17/2007	(677858)
4	11/20/2007	(718398)
5	01/02/2008	(633658)
6	01/14/2008	(718399)
7	02/12/2008	(718392)
8	02/29/2008	(677856)
9	02/29/2008	(677857)
10	03/10/2008	(718393)
11	04/04/2008	(718394)
12	05/15/2008	(733635)
13	06/16/2008	(696686)
14	07/02/2008	(681963)
15	08/04/2008	(682876)
16	08/08/2008	(718397)
17	09/11/2008	(718395)
18	09/23/2008	(718396)
19	09/23/2008	(733636)
20	09/30/2008	(733637)
21	11/03/2008	(704117)

22 01/14/2009 (721751)
 23 01/23/2009 (733633)
 24 01/23/2009 (733634)
 25 04/15/2009 (740047)

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

Date: 05/31/2007 (677856) CN600755326
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 07/31/2007 (633657) CN600755326
 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: 08/17/2007 (566818) CN600755326
 Self Report? NO Classification: Moderate
 Citation: Operational Requirements, 1. PERMIT
 Description: Failure to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained.
 Date: 08/31/2007 (677858) CN600755326
 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: 11/30/2007 (633658) CN600755326
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 12/31/2007 (718399) CN600755326
 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 (718392) CN600755326
 Self Report? YES Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 03/20/2008 (637644) CN600755326
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(4)
 Permit Conditions 2(g), Page 7 PERMIT
 Description: Failure to prevent an unauthorized discharge of sewage into or adjacent to any water in the state.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 317 317.3(a)
 Description: Failure to provide intruder resistance and controlled access at all lift stations.
 Date: 03/31/2008 (718394) CN600755326
 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 CN600755326
 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 CN600755326
 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
ENFORCEMENT ACTION
CONCERNING
CITY OF SAN BENITO
RN103935599**

§ **BEFORE THE**
§
§ **TEXAS COMMISSION ON**
§
§ **ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-0626-MWD-E

I. JURISDICTION AND STIPULATIONS

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

1. The City owns and operates a wastewater treatment plant located 0.25 mile southeast of the intersection of Farm-to-Market Road 509 and Arroyo Colorado in Cameron County, Texas (the "Facility").
2. The City has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about April 20, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Twenty-One Thousand Seven Hundred Ninety Dollars (\$21,790) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Four Thousand Three Hundred Fifty-Eight Dollars (\$4,358) is deferred

contingent upon the City'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 City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty. Seventeen Thousand Four Hundred Thirty-Two Dollars (\$17,432) shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the City has implemented the following corrective measures at the Facility:
 - a. By November 31, 2008, replaced the damaged impellers and partition wall expansion plates in the north and south aeration basins;
 - b. By December 31, 2008, updated the Facility's operational guidance to ensure that the sampling for E. coli bacteria is properly accomplished; and
 - c. During January 2009, began sampling for E. coli bacteria.
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 City 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 City is alleged to have:

1. Failed to comply with permit effluent limits, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0014454001, Interim Effluent Limitations and Monitoring Requirements No. 1 as documented during a record review conducted on March 25, 2009, and shown in the following table:

EFFLUENT VIOLATION TABLE						
Effluent	Limits	1/31/2008	3/31/2008	New Permit Issued October 28, 2008	11/30/2008	12/31/2008
Total Suspended Solids Daily Avg Loading	Limit = 313 lbs/day	394.1	c		c	c
Total Suspended Solids Daily Avg Conc.	Limit = 15 mg/L	21.2	c		c	c
Total Suspended Solids Daily Max Conc.	Limit = 40 mg/L	73.3	c		c	c
Total Ammonia Nitrogen Daily Avg Loading	Limit = 63 lbs/day	c	233.8		n/a	n/a
Total Ammonia Nitrogen Daily Avg Conc.	Limit = 3 mg/L	c	14.3		15.3	9.4
Total Ammonia Nitrogen Daily Max Conc.	Limit = 10 mg/L	c	29.2		17.8	17.6
Total Ammonia Nitrogen Daily Avg Loading	Limit = 94 lbs/day	n/a	n/a		299.1	166.2
CBOD Daily Avg Loading	Limit = 209 lbs/day	234.9	c		c	c
CBOD Daily Avg Conc.	Limit = 10 mg/L	11.6	10.8		c	c

Max. = maximum
mg/L = milligrams per liter
CBOD = carbonaceous biochemical oxygen demand

lbs/day = pounds per day
Conc. = concentration
Avg. = average
c = compliant

- Failed to collect and analyze samples for E. coli bacteria, for the monitoring periods ending November 30, 2008 and December 31, 2008, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and 319.5(b) and TPDES Permit No. WQ0014454001, Monitoring and Reporting Requirements No.1, as documented during a record review conducted on March 25, 2009. Specifically, the City reported on the discharge monitoring reports that samples were taken for fecal coliform bacteria rather than for E. coli bacteria during November 2008 and December 2008.

III. DENIALS

The City generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of San Benito, Docket No. 2009-0626-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 City shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II Paragraph 6 above, Seventeen Thousand Four Hundred Thirty-Two Dollars (\$17,432) of the assessed administrative penalty shall be offset with the condition that the City implements the SEP defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that, within 90 days after the effective date of this Agreed Order, the City shall submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0014454001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with this Ordering Provision. 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 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:

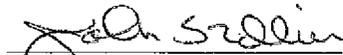
Water Section, Manager
Harlingen Regional Office
Texas Commission on Environmental Quality
1804 West Jefferson Avenue
Harlingen, Texas 78550-5247

4. The provisions of this Agreed Order shall apply to and be binding upon the City. The City 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.
5. If the City 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 City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes 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 City shall be made in writing to the Executive Director. Extensions are not effective until the City receives 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 City 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 multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

10/15/2009
Date

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

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

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

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


Signature

9-15-09
Date

MANUEL LARA
Name (Printed or typed)
Authorized Representative of
City of San Benito

CITY MANAGER
Title

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

Attachment A
Docket Number: 2009-0626-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of San Benito
Payable Penalty Amount:	Seventeen Thousand Four Hundred Thirty-Two Dollars (\$17,432)
SEP Amount:	Seventeen Thousand Four Hundred Thirty-Two Dollars (\$17,432)
Type of SEP:	Pre-approved
Third-Party Recipient:	The Rensselaerville Institute-“Self-Help Rio Grande”
Location of SEP:	Cameron County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent will contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the Third-Party Recipient will provide low income homeowners with failing on-site wastewater treatment systems or no system at all, with technical and financial assistance to install, repair, or replace those water and wastewater sewage systems. To reduce costs, the Third-Party Recipient teams with low income homeowners to solve water and wastewater problems by working together to build water and wastewater infrastructures. SEP contributions are to be used for material and labor costs.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by protecting water sources for drinking, recreation, and wildlife from contamination from homes with substandard water and wastewater service.

C. Minimum Expenditure

Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

The Rensselaerville Institute
135 Paseo Del Prado, Suite 37
Edinburg, TX 78539

3. Records and Reporting

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear

statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

