

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2009-0900-WQ-E **TCEQ ID:** RN101424687 **CASE NO.:** 37784  
**RESPONDENT NAME:** City of Fort Worth

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" 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	
<b>CASE TYPE:</b>		
<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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> City of Fort Worth PWS, located at the 4600 block of Hillside Street that includes a 10-inch water line in the 4000 block of Fossil Creek Boulevard, Fort Worth, Tarrant County</p> <p><b>TYPE OF OPERATION:</b> Public water system</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on September 28, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732  <b>TCEQ Enforcement Coordinator:</b> Ms. Evette Alvarado, Enforcement Division, Enforcement Team I, MC 169, (512) 239-2573;  Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> The Honorable Mike Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102  Mr. Fernando Costa, Assistant City Manager, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, Texas 76102  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> May 20, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> June 3, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a record review.</p> <p><b>WATER</b></p> <p>Failure to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state and failure to make notification of the discharge within 24 hours of its occurrence. Specifically, on March 14, 2009, approximately 3.6 million gallons of potable water were discharged from a 10-inch line break in the 4000 block of Fossil Creek Boulevard. The discharge flowed into a pond within the Fossil Creek Golf Club, resulting in a fish kill of approximately 127 fish [TEX. WATER CODE §§ 26.039(b) and 26.121(a)].</p>	<p><b>Total Assessed:</b> \$6,250</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$6,250</p> <p><b>Total Paid (Due) to General Revenue:</b> \$0</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Orders Justification:</b> Environmental receptors have been exposed to pollutants which exceed levels that are protective.</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures:</p> <p>a. On March 14, 2009:</p> <p>i. Stopped the discharge and repaired the 10-inch water line; and</p> <p>ii. Removed and disposed of the dead fish and introduced dechlorination tablets at the site of the discharge.</p> <p>b. By June 8, 2009, updated the Respondent's existing standard operating procedures to ensure that discharge notifications are submitted to the TCEQ in a timely manner.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p>

Additional ID No(s): 0

**Attachment A**  
**Docket Number: 2009-0900-WQ-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>City of Fort Worth</b>
<b>Payable Penalty Amount:</b>	<b>Six Thousand Two Hundred Fifty Dollars (\$6,250)</b>
<b>SEP Amount:</b>	<b>Six Thousand Two Hundred Fifty Dollars (\$6,250)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>Keep Texas Beautiful – Texas Waterways Cleanup Program</b>
<b>Location of SEP:</b>	<b>Tarrant County</b>

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 shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to cleanup rivers, lakes, and shorelines, by supplying project coordination, labor, supplies, and materials for cleanup events and by providing assistance with disposal fees for proper disposal of wastes collected at events. To maximize the event, cleanups will use volunteers for labor. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

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 improving water quality of lakes, rivers, and creeks, reducing flooding caused by blockage of drainage outlets, reducing the potential threat to wildlife, decreasing damage to boats, and reducing injury to swimmers and bathers.



C. Minimum Expenditure

The 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:

Hester Bloom, Program Manager  
Keep Texas Beautiful  
P.O. Box 2251  
Austin, Texas 78768

**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

<b>DATES</b>	Assigned	8-Jun-2009	Screening	11-Jun-2009	EPA Due	
	PCW	11-Jun-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	City of Fort Worth		
Reg. Ent. Ref. No.	RN101424687		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	37784	No. of Violations	1
Docket No.	2009-0900-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Evette Alvarado
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit	Minimum \$0	Maximum	\$10,000

<b>Penalty Calculation Section</b>			
<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>		Subtotal 1	\$5,000
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>			
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>			
<b>Compliance History</b>	50.0% Enhancement	Subtotals 2, 3, & 7	\$2,500
Notes	Enhancement recommended for two Agreed Orders without a denial of liability.		
<b>Culpability</b>	No 0.0% Enhancement	Subtotal 4	\$0
Notes	The Respondent does not meet the culpability criteria.		
<b>Good Faith Effort to Comply Total Adjustments</b>		Subtotal 5	\$1,250
<b>Economic Benefit</b>	0.0% Enhancement* <small>*Capped at the Total EB \$ Amount</small>	Subtotal 6	\$0
Total EB Amounts	\$1		
Approx. Cost of Compliance	\$2,433		
<b>SUM OF SUBTOTALS 1-7</b>		Final Subtotal	\$6,250
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	Adjustment	\$0
Notes			
		Final Penalty Amount	\$6,250
<b>STATUTORY LIMIT ADJUSTMENT</b>		Final Assessed Penalty	\$6,250
<b>DEFERRAL</b>	0.0% Reduction	Adjustment	\$0
<small>Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>			
Notes	No deferral is recommended for Findings Orders.		
<b>PAYABLE PENALTY</b>			\$6,250

**Screening Date** 11-Jun-2009

**Docket No.** 2009-0900-WQ-E

**PCW**

**Respondent** City of Fort Worth

Policy Revision 2 (September 2002)

**Case ID No.** 37784

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN101424687

**Media [Statute]** Water Quality

**Enf. Coordinator** Evette Alvarado

**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)	0	0%
	Other written NOVs	0	0%
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	2	50%
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%
<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)** 50%

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

No

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

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

Average Performer

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

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement recommended for two Agreed Orders without a denial of liability.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 50%

<b>Screening Date</b> 11-Jun-2009	<b>Docket No.</b> 2009-0900-WQ-E	<b>PCW</b>
<b>Respondent</b> City of Fort Worth		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 37784		<i>PCW Revision October 30, 2009</i>
<b>Reg. Ent. Reference No.</b> RN101424687		
<b>Media [Statute]</b> Water Quality		
<b>Enf. Coordinator</b> Evette Alvarado		
<b>Violation Number</b> <input type="text" value="1"/>		
<b>Rule Cite(s)</b>	Tex. Water Code §§ 26.039(b) and 26.121(a)	
<b>Violation Description</b>	Failed to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state and failed to make notification of the discharge within 24 hours of its occurrence, as documented during a record review on May 20, 2009. Specifically, on March 14, 2009, approximately 3.6 million gallons of potable water were discharged from a 10-inch line break in the 4000 block of Fossil Creek Boulevard. The discharge flowed into a pond within the Fossil Creek Golf Club, resulting in a fish kill of approximately 127 fish.	
	<b>Base Penalty</b>	<input type="text" value="\$10,000"/>

**>> Environmental, Property and Human Health Matrix**

	<b>Harm</b>				
	Major	Moderate	Minor		
<b>OR</b>				<b>Percent</b>	<input type="text" value="50%"/>
	Actual	Potential			
	<input type="text" value="x"/>				

**>> Programmatic Matrix**

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

<b>Matrix Notes</b>	Human health or the environment has been exposed to pollutants which exceed protective levels as a result of this violation.
---------------------	--

<b>Adjustment</b>	<input type="text" value="\$5,000"/>
	<input type="text" value="\$5,000"/>

**Violation Events**

Number of Violation Events	<input type="text" value="1"/>		Number of violation days	<input type="text" value="1"/>
----------------------------	--------------------------------	--	--------------------------	--------------------------------

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

<b>Violation Base Penalty</b>	<input type="text" value="\$5,000"/>
-------------------------------	--------------------------------------

One daily event is recommended.	
---------------------------------	--

**Good Faith Efforts to Comply**

	<b>25.0%</b>				
	Reduction				
	Before NOV	NOV to EDRP/Settlement Offer			
<b>Extraordinary</b>	<input type="text"/>	<input type="text"/>			
<b>Ordinary</b>	<input type="text" value="x"/>	<input type="text"/>			
<b>N/A</b>	<input type="text"/>	<input type="text"/>			
		(mark with x)			

<b>Notes</b>	The Respondent stopped the discharge and cleaned up the affected area on March 14, 2009.
--------------	--

<b>Violation Subtotal</b>	<input type="text" value="\$3,750"/>
---------------------------	--------------------------------------

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount	<input type="text" value="\$1"/>
	<b>Violation Final Penalty Total</b>
	<input type="text" value="\$6,250"/>
	<b>This violation Final Assessed Penalty (adjusted for limits)</b>
	<input type="text" value="\$6,250"/>

## Economic Benefit Worksheet

**Respondent** City of Fort Worth  
**Case ID No.** 37784  
**Reg. Ent. Reference No.** RN101424687  
**Media** Water Quality  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment	\$715	14-Mar-2009	15-Mar-2009	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	\$50	14-Mar-2009	8-Jun-2009	0.24	\$1	n/a	\$1
Remediation/Disposal	\$1,868	14-Mar-2009	15-Mar-2009	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 remove and dispose of the dead fish, shut down and repair the water line, and introduce dechlorination tablets at the point of discharge. Training/sampling costs are the estimated costs associated with providing additional employee training and updating the standard operating procedure for reporting discharges. Date required is the date of the discharge. Final date is the date compliance was achieved.

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 \$2,433 TOTAL \$1





TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF FORT WORTH  
RN101424687**

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

**AGREED ORDER  
DOCKET NO. 2009-0900-WQ-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Fort Worth ("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 presented this agreement to the Commission.

The City understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the City agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the City.

The Commission makes the following Findings of Fact and Conclusions of Law:

**I. FINDINGS OF FACT**

1. The City owns and operates a public water system at the 4600 block of Hillside Street that includes a 10-inch water line in the 4000 block of Fossil Creek Boulevard in Fort Worth, Tarrant County, Texas (the "Facility").

2. The City has discharged a pollutant into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During a record review on May 20, 2009, TCEQ staff documented a 10-inch water line break that occurred on March 14, 2009, in the 4000 block of Fossil Creek Boulevard and that the City failed to make notification of the discharge within 24 hours. Approximately 3.6 million gallons of potable water were discharged into a pond within the Fossil Creek Golf Club, killing an estimated 127 fish.
4. The City received notice of the violations on June 8, 2009.
5. The Executive Director recognizes that the City has implemented the following corrective measures:
  - a. On March 14, 2009:
    - i. Stopped the discharge and repaired the 10-inch water line; and
    - ii. Removed and disposed of the dead fish and introduced dechlorination tablets at the site of the discharge.
  - b. By June 8, 2009, updated the City's existing standard operating procedures ("SOP") to ensure that discharge notifications are submitted to the TCEQ in a timely manner.

## II. CONCLUSIONS OF LAW

1. The City is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the City failed to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state and failed to make notification of the discharge within 24 hours of its occurrence, in violation of TEX. WATER CODE §§ 26.039(b) and 26.121(a).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the City for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Six Thousand Two Hundred Fifty Dollars (\$6,250) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Six Thousand Two Hundred Fifty Dollars (\$6,250) shall be conditionally offset by the City's completion of a Supplemental Environmental Project ("SEP").

### III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The City is assessed an administrative penalty in the amount of Six Thousand Two Hundred Fifty Dollars (\$6,250) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Fort Worth, Docket No. 2009-0900-WQ-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

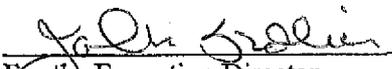
2. The City shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 4 above, Six Thousand Two Hundred Fifty Dollars (\$6,250) of the assessed administrative penalty shall be offset with the condition that the City implement the SEP defined 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. 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.
4. 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 it becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the 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.

6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the City if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against the 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.
9. 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.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

9/18/09  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of City of Fort Worth. I am authorized to agree to the attached Agreed Order on behalf of City of Fort Worth, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, City of Fort Worth waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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

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

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

  
\_\_\_\_\_  
Signature

7/27/09  
\_\_\_\_\_  
Date

Fernando Costa  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
City of Fort Worth

Asst. 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: 2009-0900-WQ-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>City of Fort Worth</b>
<b>Payable Penalty Amount:</b>	<b>Six Thousand Two Hundred Fifty Dollars (\$6,250)</b>
<b>SEP Amount:</b>	<b>Six Thousand Two Hundred Fifty Dollars (\$6,250)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>Keep Texas Beautiful – Texas Waterways Cleanup Program</b>
<b>Location of SEP:</b>	<b>Tarrant County</b>

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 shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to cleanup rivers, lakes, and shorelines, by supplying project coordination, labor, supplies, and materials for cleanup events and by providing assistance with disposal fees for proper disposal of wastes collected at events. To maximize the event, cleanups will use volunteers for labor. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

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 improving water quality of lakes, rivers, and creeks, reducing flooding caused by blockage of drainage outlets, reducing the potential threat to wildlife, decreasing damage to boats, and reducing injury to swimmers and bathers.

C. Minimum Expenditure

The 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:

Hester Bloom, Program Manager  
Keep Texas Beautiful  
P.O. Box 2251  
Austin, Texas 78768

**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.

