

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1924-WQ-E **TCEQ ID:** RN101424687 **CASE NO.:** 36926

RESPONDENT NAME: City of Fort Worth

ORDER TYPE:		
<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	
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: City of Fort Worth PWS, South Holly Water Treatment Plant, located at the 4600 block of Hillside Street, Fort Worth, Tarrant County</p> <p>TYPE OF OPERATION: Public water system</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 April 20, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768 TCEQ Enforcement Coordinator: Ms. Evette Alvarado, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2573; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: The Honorable Mike Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton, Fort Worth, Texas 76102 Mr. Fernando Costa, Assistant City Manager, City of Fort Worth, 1000 Throckmorton, Fort Worth, Texas 76102 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: November 10, 2008</p> <p>Date of NOV/NOE Relating to this Case: November 26, 2008 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to prevent the unauthorized discharge of municipal waste into or adjacent to water in the state. Specifically, on November 4, 2008, approximately 2,500 gallons of liquid ferric sulfate from a holding tank at the South Holly Water Treatment Plant was discharged into a storm drain manhole. The discharge entered the Clear Fork Trinity River through a 72" outfall immediately south of the Lancaster Avenue West Bridge, resulting in a fish kill of approximately 700 fish [TEX. WATER CODE § 26.121(a)(1)].</p>	<p>Total Assessed: \$3,750</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$3,750</p> <p>Total Paid (Due) to General Revenue: \$0</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input 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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification: Environmental receptors have been exposed to pollutants which exceed levels that are protective.</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 5, 2008, stopped the discharge, washed and evacuated the ferric sulfate sludge from the storm drain, and removed and disposed of the dead fish;</p> <p>b. By November 7, 2008, located and identified all storm drain manholes within the Facility by means of plant drawings, visual inspections, and dye tracings. Once identified, all storm drain manhole covers were painted red; and</p> <p>c. By November 26, 2008, abandoned one sump pump line that was plumbed into one of the Facility's storm drain manholes and installed a new 4-inch drain line from the Facility's liquid ferric sulfate/polymer building and containment area to the sanitary sewer system.</p> <p>Ordering Provisions:</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): 220012

Attachment A
Docket Number: 2008-1924-WQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Fort Worth
Payable Penalty Amount:	Three Thousand Seven Hundred Fifty Dollars (\$3,750)
SEP Amount:	Three Thousand Seven Hundred Fifty Dollars (\$3,750)
Type of SEP:	Pre-approved
Third-Party Recipient:	Keep Texas Beautiful
Location of SEP:	Tarrant 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 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 ATexas 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	1-Dec-2008			
	PCW	19-Dec-2008	Screening	15-Dec-2008	EPA Due

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

CASE INFORMATION					
Enf./Case ID No.	36926	No. of Violations	1		
Docket No.	2008-1924-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		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,000
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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	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No enhancement recommended due to Average Performer classification.

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	\$1,250
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$40
 Approx. Cost of Compliance: \$11,482
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,750
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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 \$3,750

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,750
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for findings orders.

PAYABLE PENALTY	\$3,750
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PCW

Policy Revision 2 (September 2002)
PCW Revision October 30, 2008

Screening Date 15-Dec-2008

Docket No. 2008-1924-WQ-E

Respondent City of Fort Worth

Case ID No. 36926

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	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 judgements 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) 0%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No enhancement recommended due to Average Performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

<p>Screening Date 15-Dec-2008</p> <p>Respondent City of Fort Worth</p> <p>Case ID No. 36926</p> <p>Reg. Ent. Reference No. RN101424687</p> <p>Media [Statute] Water Quality</p> <p>Enf. Coordinator Evette Alvarado</p> <p>Violation Number <input type="text" value="1"/></p> <p>Rule Cite(s) <input type="text" value="Tex. Water Code § 26.121(a)(1)"/></p> <p>Violation Description <input 700="" a="" approximately="" avenue="" bridge,="" fish="" fish."="" immediately="" in="" kill="" lancaster="" of="" outfall="" resulting="" south="" the="" type="text" value="Failed to prevent the unauthorized discharge of municipal waste into or adjacent to water in the state. Specifically, on November 4, 2008, approximately 2500 gallons of liquid ferric sulfate from a holding tank at the South Holly Water Treatment Plant was discharged into a storm drain manhole. The discharge entered the Clear Fork Trinity River through a 72" west=""/></p>	<p>Docket No. 2008-1924-WQ-E</p> <p style="text-align: right;">PCW</p> <p style="text-align: right; font-size: small;">Policy Revision 2 (September 2002) PCW Revision October 30, 2008</p> <p style="text-align: right;">Base Penalty <input type="text" value="\$10,000"/></p>																							
<p>>> Environmental, Property and Human Health Matrix</p>																								
<p>OR</p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="2"></td> <td colspan="3" style="text-align: center;">Harm</td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">Release</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">Actual</td> <td style="text-align: center;"><input type="text" value="x"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td rowspan="2" style="vertical-align: middle;">Percent <input type="text" value="50%"/></td> </tr> <tr> <td></td> <td style="text-align: center;">Potential</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> </table>			Harm					Release	Major	Moderate	Minor			Actual	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="50%"/>		Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
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<p>Matrix Notes</p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td colspan="2"></td> <td colspan="3" style="text-align: center;">Falsification</td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td rowspan="2" style="vertical-align: middle;">Percent <input type="text" value="0%"/></td> </tr> <tr> <td></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> </table> <p style="text-align: center; border: 1px solid black; padding: 5px;">Human health or the environment has been exposed to significant levels of pollutants that exceed protective levels as a result of this violation.</p> <p style="text-align: right;">Adjustment <input type="text" value="\$5,000"/></p>			Falsification					Major	Moderate	Minor				<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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<p>Violation Events</p>																								
<p>Number of Violation Events <input type="text" value="1"/></p> <p>Number of violation days <input type="text" value="1"/></p> <p>mark only one with an x</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr><td style="text-align: center;">daily</td><td style="text-align: center;"><input type="text" value="x"/></td></tr> <tr><td style="text-align: center;">weekly</td><td style="text-align: center;"><input type="text"/></td></tr> <tr><td style="text-align: center;">monthly</td><td style="text-align: center;"><input type="text"/></td></tr> <tr><td style="text-align: center;">quarterly</td><td style="text-align: center;"><input type="text"/></td></tr> <tr><td style="text-align: center;">semiannual</td><td style="text-align: center;"><input type="text"/></td></tr> <tr><td style="text-align: center;">annual</td><td style="text-align: center;"><input type="text"/></td></tr> <tr><td style="text-align: center;">single event</td><td style="text-align: center;"><input type="text"/></td></tr> </table> <p style="border: 1px solid black; padding: 5px; margin-top: 10px;">One daily event is recommended from the date of the discharge (November 4, 2008) to the date the discharge ceased and immediate actions were taken to address the violation (November 5, 2008).</p>	daily	<input type="text" value="x"/>	weekly	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>	<p>Violation Base Penalty <input type="text" value="\$5,000"/></p>									
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<p>Violation Subtotal <input type="text" value="\$3,750"/></p>																								
<p>Economic Benefit (EB) for this violation</p>																								
<p>Estimated EB Amount <input type="text" value="\$40"/></p>	<p>Statutory Limit Test</p> <p>Violation Final Penalty Total <input type="text" value="\$3,750"/></p> <p>This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$3,750"/></p>																							

Economic Benefit Worksheet

Respondent: City of Fort Worth
Case ID No.: 36926
Reg. Ent. Reference No.: RN101424687
Media: Water Quality
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment	\$9,279	4-Nov-2008	26-Nov-2008	0.06	\$2	\$37	\$39
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	\$2,000	4-Nov-2008	7-Nov-2008	0.01	\$1	n/a	\$1
Remediation/Disposal	\$203	4-Nov-2008	5-Nov-2008	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
 Delayed costs include the installation of a drain line from the ferric sulfate/polymer building and containment area to the sanitary sewer system, plumbing sump pumps into this drain line, remediation of the affected area, and disposal of dead fish. The date required is the date of the discharge. The final dates are the dates actions were completed to achieve compliance and to prevent future violations.

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	\$11,482	TOTAL	\$40
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Sites Outside of Texas

N/A

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. 2008-1924-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 Respondent.

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 that includes a holding tank at the South Holly Water Treatment Plant, located at the 4600 block of Hillside Street in Fort Worth, Tarrant 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. On November 10, 2008, TCEQ staff documented a discharge of liquid ferric sulfate that occurred from a holding tank at the Facility on November 4, 2008. Approximately 2,500 gallons of liquid ferric sulfate was discharged into a storm water drain manhole, through a 72" outfall, and into the Clear Fork Trinity River immediately south of the Lancaster Avenue West Bridge, killing an estimated 700 fish.
4. The Respondent received notice of the violation on December 1, 2008.
5. The Executive Director recognizes that the City has implemented the following corrective measures at the Facility:
 - a. By November 5, 2008, stopped the discharge, washed and evacuated the ferric sulfate sludge from the storm drain, and removed and disposed of the dead fish;
 - b. By November 7, 2008, located and identified all storm drain manholes within the Facility by means of plant drawings, visual inspections, and dye tracings. Once identified, all storm drain manhole covers were painted red; and
 - c. By November 26, 2008, abandoned one sump pump line that was plumbed into one of the Facility's storm drain manholes and installed a new 4-inch drain line from the Facility's liquid ferric sulfate/polymer building and containment area to the sanitary sewer system.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to prevent the unauthorized discharge of municipal waste into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Three Thousand Seven Hundred Fifty Dollars (\$3,750) 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. Three Thousand Seven Hundred Fifty Dollars (\$3,750) 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 Three Thousand Seven Hundred Fifty Dollars (\$3,750) 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. 2008-1924-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, Three Thousand Seven Hundred Fifty Dollars (\$3,750) 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 Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This Agreed Order may be executed in 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

Date 3/24/2009

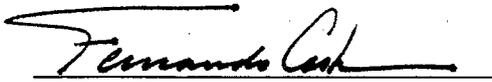
I, the undersigned, have read and understand the attached Agreed Order in the matter of City of Fort Worth. I am authorized to agree to the attached Agreed Order on behalf of City of Fort Worth, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment 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 **Fernando Costa**
Assistant City Manager

Date 2/17/09

Name (Printed or typed)
Authorized Representative of
City of Fort Worth

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: 2008-1924-WQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Fort Worth
Payable Penalty Amount: Three Thousand Seven Hundred Fifty Dollars (\$3,750)
SEP Amount: Three Thousand Seven Hundred Fifty Dollars (\$3,750)
Type of SEP: Pre-approved
Third-Party Recipient: Keep Texas Beautiful
Location of SEP: Tarrant 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 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 ATexas 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.

