

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2009-0375-MWD-E **TCEQ ID:** RN101518298 **CASE NO.:** 37330

**RESPONDENT NAME:** City of Houston

<b>ORDER TYPE:</b>		
<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	
<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 Houston-Houston Airport System WWTP, located 500 feet east of Lee Road approximately 1,800 feet north of the intersection of Will Clayton Parkway and Lee Road, Harris County</p> <p><b>TYPE OF OPERATION:</b> Domestic wastewater treatment 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 July 13, 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> Mr. Harvey Wilson, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-0321; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> Mr. James Parise, Environmental Manager, City of Houston, P.O. Box 60106, Houston, Texas 77205                      Mr. Richard M. Vacar, Director, City of Houston, P.O. Box 60106, Houston, Texas 77205  <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> September 18, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> March 13, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a record review.</p> <p><b>WATER</b></p> <p>Failure to comply with the permit effluent limits for total suspended solids and carbonaceous biochemical oxygen demand [Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0012418001 Effluent Limitations and Monitoring Requirements No. 1, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a)].</p>	<p><b>Total Assessed:</b> \$2,540</p> <p><b>Total Deferred:</b> \$508  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$2,032</p> <p><b>Total Paid (Due) to General Revenue:</b> \$0</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" 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>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has de-commissioned the wastewater treatment plant and is diverting its flow to another city owned wastewater treatment plant. This facility will no longer be used to treat wastewater.</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): WQ0012418001

Attachment A

Docket Number: 2009-0375-MWD-E

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** City of Houston  
**Payable Penalty Amount:** Two Thousand Thirty-Two Dollars (\$2,032)  
**SEP Amount:** Two Thousand Thirty-Two Dollars (\$2,032)  
**Type of SEP:** Pre-approved  
**Third-Party Recipient:** Armand Bayou Nature Center Coastal Tall Grass  
Management-Prescribed Burn Program and Prairie  
Restoration Project  
**Location of SEP:** Harris 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 pay for the labor and materials costs associated with conducting prescribed burns, removing non-native trees, and for planting native trees and plants.

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 increasing ecosystem functionality. It will contribute to the overall prairie health by suppressing invasive brush species, increasing soil fertility, and promoting plant vigor.

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:

Armand Bayou Nature Center  
Attn: Mark Kramer  
PO Box 58828  
Houston, Texas 77258

**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.





Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

ICEQ

DATES

Assigned 16-Mar-2009

PCW 18-Mar-2009

Screening 18-Mar-2009

EPA Due

## RESPONDENT/FACILITY INFORMATION

Respondent City of Houston

Reg. Ent. Ref. No. RN101518298

Facility/Site Region 12-Houston

Major/Minor Source Minor

## CASE INFORMATION

Enf./Case ID No. 37330

Docket No. 2009-0375-MWD-E

Media Program(s) Water Quality

Multi-Media

No. of Violations 1

Order Type 1660

Government/Non-Profit Yes

Enf. Coordinator Harvey Wilson

EC's Team Enforcement Team 3

Admin. Penalty \$ Limit Minimum \$0

Maximum \$10,000

## Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 \$2,000

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 32.0% Enhancement Subtotals 2, 3, &amp; 7 \$640

Notes An enhancement is recommended because the Respondent has six self-reported effluent violations and one NOV for a non-similar violation.

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 \$345  
Approx. Cost of Compliance \$5,000

\*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7

Final Subtotal \$2,640

OTHER FACTORS AS JUSTICE MAY REQUIRE

-3.8%

Adjustment -\$100

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommended reduction in the penalty so that monthly self-reported effluent violations do not overly impact the penalty amount.

Final Penalty Amount \$2,540

STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty \$2,540

DEFERRAL

20.0%

Reduction

Adjustment -\$508

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

\$2,032

**Screening Date** 18-Mar-2009

**Docket No.** 2009-0375-MWD-E

**PCW**

**Respondent** City of Houston

Policy Revision 2 (September 2002)

**Case ID No.** 37330

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN101518298

**Media [Statute]** Water Quality

**Enf. Coordinator** Harvey Wilson

### 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)	6	30%
	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 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%
<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)** 32%

>> **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**

An enhancement is recommended because the Respondent has six self-reported effluent violations and one NOV for a non-similar violation.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 32%

**Screening Date** 18-Mar-2009 **Docket No.** 2009-0375-MWD-E **PCW**  
**Respondent** City of Houston *Policy Revision 2 (September 2002)*  
**Case ID No.** 37330 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101518298  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Harvey Wilson  
**Violation Number** 1  
**Rule Cite(s)** Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0012418001  
 Effluent Limitations and Monitoring Requirements No. 1, 30 Tex. Admin. Code §  
 305.125(1), and Tex. Water Code § 26.121(a)  
**Violation Description** Failed to comply with the permit effluent limits as depicted in the attached table.

**Base Penalty** \$10,000

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

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			x	10%
Potential				

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

A simplified model was used to evaluate carbonaceous biochemical oxygen demand to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Flow and total suspended solids were also considered. As a result of these discharges, 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.

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 2 151 Number of violation days

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

**Violation Base Penalty** \$2,000

Two quarterly events are recommended.

**Good Faith Efforts to Comply**

0.0% Reduction Before NOV NOV to EDPRP/Settlement Offer \$0

Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

**Violation Subtotal** \$2,000

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

Estimated EB Amount \$345

Violation Final Penalty Total \$2,540

This violation Final Assessed Penalty (adjusted for limits) \$2,540

## Economic Benefit Worksheet

**Respondent** City of Houston  
**Case ID No.** 37330  
**Reg. Ent. Reference No.** RN101518298  
**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
<b>Delayed Costs</b>							
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	\$5,000	1-Dec-2007	17-Apr-2009	1.38	\$345	n/a	\$345
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**  
 The estimated cost of re-routing the wastewater to a different treatment facility and de-commissioning this Facility. Date Required is the date the noncompliance was documented. Final Date was the date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance \$5,000 TOTAL \$345

City of Houston – Airport System WWTP  
Docket No. 2009-0375-MWD-E  
RN101518298  
TPDES Permit No. WQ0012418001  
Effluent Violation Table

	Total Suspended Solids Daily Average Concentration 15 mg/L	Total Suspended Solids Daily Average Loading 0.88 lbs/day	Total Suspended Solids Single Grab Maximum Concentration 60 mg/L	Carbonaceous Biochemical Oxygen Demand Daily Average Concentration 10 mg/L
December 2007	42.0	1.96	76	C
January 2008	30.6	C	C	C
February 2008	16.4	C	C	C
March 2008	17.7	C	C	C
April 2008	21.2	C	C	11.4
May 2008	22.2	C	C	C
mg/L = milligrams per liter      lbs/day = pounds per day      C = compliant				



# Compliance History Report

Customer/Respondent/Owner-Operator:	CN602550154	City of Houston	Classification: Rating: 0.82 AVERAGE
Regulated Entity:	RN101518298	CITY OF HOUSTON - HOUSTON AIRPORT SYSTEM WWTP	Classification: Site Rating: 0.29 AVERAGE
ID Number(s):	WASTEWATER	PERMIT	WQ0012418001
	WASTEWATER	PERMIT	TPDES0088111
	WASTEWATER	PERMIT	TX0088111
	WASTEWATER LICENSING	LICENSE	WQ0012418001
Location:	500 feet east of Lee Road approximately 1,800 feet north of the intersection of Will Clayton Parkway and Lee Road Harris County, Texas		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	March 18, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 18, 2004 to March 18, 2009		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Harvey Wilson	Phone:	239 - 0321

## 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 of the site during the compliance period?    | Yes                                       |
| 3. If Yes, who is the current owner?   | City of Houston-Houston<br>Airport System |
| 4. If Yes, who was/were the prior owner(s)?  | Panalpina Inc.                            |
| 5. When did the change(s) in ownership occur?  | 7/2/2004                                  |
| 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 | 10/01/2004 | (361411) |
| 2 | 10/01/2004 | (361412) |
| 3 | 10/01/2004 | (361413) |
| 4 | 10/01/2004 | (361414) |
| 5 | 10/01/2004 | (361415) |
| 6 | 10/13/2004 | (335781) |
| 7 | 03/07/2005 | (387159) |
| 8 | 08/05/2005 | (445560) |

9	08/05/2005	(445561)
10	08/05/2005	(445562)
11	08/05/2005	(445563)
12	08/05/2005	(445565)
13	08/05/2005	(445566)
14	08/05/2005	(445567)
15	08/05/2005	(445568)
16	08/05/2005	(445569)
17	10/31/2005	(477171)
18	10/31/2005	(477172)
19	10/31/2005	(477173)
20	03/27/2006	(477169)
21	03/27/2006	(477170)
22	03/27/2006	(477174)
23	03/27/2006	(477175)
24	03/27/2006	(477176)
25	11/20/2006	(624853)
26	11/20/2006	(624854)
27	11/20/2006	(624855)
28	11/20/2006	(624857)
29	11/20/2006	(624859)
30	11/20/2006	(624860)
31	11/20/2006	(624861)
32	11/20/2006	(624862)
33	11/20/2006	(624863)
34	11/20/2006	(715176)
35	11/20/2006	(715177)
36	11/20/2006	(715178)
37	12/23/2006	(624864)
38	02/10/2007	(624865)
39	02/28/2007	(624851)
40	03/25/2007	(624852)
41	05/25/2007	(675522)
42	05/25/2007	(675532)
43	07/06/2007	(542278)
44	09/18/2007	(624856)
45	09/18/2007	(624858)
46	01/21/2008	(675533)
47	01/28/2008	(675524)
48	01/28/2008	(675525)
49	01/28/2008	(675526)
50	01/28/2008	(675527)
51	01/28/2008	(675530)
52	02/21/2008	(675523)
53	04/04/2008	(675528)
54	04/04/2008	(675529)
55	04/04/2008	(675531)
56	06/06/2008	(693841)
57	06/06/2008	(693842)
58	07/22/2008	(693843)
59	07/22/2008	(693844)
60	07/22/2008	(693845)
61	12/17/2008	(731004)
62	03/13/2009	(703206)

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

Date:	07/05/2007	542278	CN602550154		
Self Reprt?	NO			Classification	Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) WQ0012418-001 PERMIT				
Description:	Failure to tranfer the permit to the current owner				
Date:	12/31/2007	(675533)	CN602550154		
Self Report?	NO			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 parameters				
Date:	01/31/2008	(675523)	CN602550154		
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:	02/29/2008	(693841)	CN602550154		
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:	03/31/2008	(693842)	CN602550154		
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:	04/30/2008	(693843)	CN602550154		
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:	05/31/2008	(693844)	CN602550154		
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 HOUSTON  
RN101518298

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2009-0375-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 the City of Houston ("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 domestic wastewater treatment system located 500 feet east of Lee Road approximately 1,800 feet north of the intersection of Will Clayton Parkway and Lee Road in Harris County, Texas (the "Facility").
2. The City has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
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 March 18, 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 Two Thousand Five Hundred Forty Dollars (\$2,540) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Five Hundred Eight Dollars (\$508) 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. Two Thousand Thirty-Two Dollars (\$2,032) shall be conditionally offset by the City's completion of a Supplemental Environmental Project.

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 de-commissioned the wastewater treatment plant and is diverting its flow to another City owned wastewater treatment plant. This facility will no longer be used to treat wastewater.
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 of the Facility, the City is alleged to have failed to comply with the permit effluent limits, in violation of Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0012418001 Effluent Limitations and Monitoring Requirements No. 1, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a), as depicted in the table below:

**Effluent Violation Table**

	Total Suspended Solids Daily Average Concentration 15 mg/L	Total Suspended Solids Daily Average Loading 0.88 lbs/day	Total Suspended Solids Single Grab Maximum Concentration 60 mg/L	Carbonaceous Biochemical Oxygen Demand Daily Average Concentration 10 mg/L
December 2007	42.0	1.96	76	C
January 2008	30.6	C	C	C
February 2008	16.4	C	C	C
March 2008	17.7	C	C	C
April 2008	21.2	C	C	11.4
May 2008	22.2	C	C	C
mg/L = milligrams per liter      lbs/day = pounds per day      C = compliant				

### 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 Houston, Docket No. 2009-0375-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 I, Paragraph 6 above, Two Thousand Thirty-Two Dollars (\$2,032) 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 the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. 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.
6. 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.

7. 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

*John S. Rollin*  
For the Executive Director

6/18/2009  
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]*  
Signature

5/14/09  
Date

RICHARD M. VACAR  
Name (Printed or typed)  
Authorized Representative of  
City of Houston

DIRECTOR  
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: 2009-0375-MWD-E

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** City of Houston  
**Payable Penalty Amount:** Two Thousand Thirty-Two Dollars (\$2,032)  
**SEP Amount:** Two Thousand Thirty-Two Dollars (\$2,032)  
**Type of SEP:** Pre-approved  
**Third-Party Recipient:** Armand Bayou Nature Center Coastal Tall Grass Management-Prescribed Burn Program and Prairie Restoration Project  
**Location of SEP:** Harris 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 pay for the labor and materials costs associated with conducting prescribed burns, removing non-native trees, and for planting native trees and plants.

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 increasing ecosystem functionality. It will contribute to the overall prairie health by suppressing invasive brush species, increasing soil fertility, and promoting plant vigor.

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:

Armand Bayou Nature Center  
Attn: Mark Kramer  
PO Box 58828  
Houston, Texas 77258

**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.

