

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of New Deal, located approximately one mile east of New Deal on County Road ("CR") 57 on the northwest corner of the intersection of CRs 57 and 25, Lubbock County</p> <p>TYPE OF OPERATION: Wastewater treatment facility</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 September 20, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Mr. Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732 TCEQ Enforcement Coordinator: Mr. Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: The Honorable Emsley L. Baker, Jr., Mayor, City of New Deal, P.O. Box 126, New Deal, Texas 79350 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 checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 16, 2010</p> <p>Date of NOV/NOE Relating to this Case: May 7, 2010 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failed to properly operate and maintain the Facility and all of its systems of collection, treatment, and disposal. Specifically, the Respondent failed to annually calibrate the secondary effluent flow meter which measures effluent used for irrigation [Permit No. WQ0012740001, Part VI, Special Provision No. 3 and 30 TEX. ADMIN. CODE § 305.125(1)].</p> <p>2) Failed to prevent an unauthorized discharge of an unknown amount of wastewater from the holding ponds. Specifically, a discharge of wastewater was noted from the northeast corner of the northern holding pond, running directly into a nearby playa lake bottom [Permit No. WQ0012740001, Part VI, Special Provision No. 7, Part VII, Standard Provision No. 2.b., 30 TEX. ADMIN. CODE § 305.125(1), (4) and (5), and TEX. WATER CODE § 26.121(a)].</p> <p>3) Failed to maintain at least two feet of freeboard at the holding ponds. Specifically, both holding ponds were found to have less than one foot of freeboard at the time of the investigation [Permit No. WQ0012740001, Part VI, Special Provisions No. 7 and 30 TEX. ADMIN. CODE § 305.125(1)].</p> <p>4) Failed to comply with permit effluent limits for biochemical oxygen</p>	<p>Total Assessed: \$8,222</p> <p>Total Deferred: \$1,644 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$6,578</p> <p>Total Paid to General Revenue: \$0</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Site 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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. Flushed water into the ponds to maintain proper dilution and effluent parameters within permitted limits by August 31, 2009;</p> <p>b. Pumped out the holding ponds and began maintaining at least two feet of freeboard to eliminate future unauthorized discharges of wastewater by March 22, 2010;</p> <p>c. Installed and properly tested the backflow prevention device by May 13, 2010;</p> <p>d. Began calibrating the secondary effluent flow meter annually by May 14, 2010; and</p> <p>e. Submitted the required noncompliance notifications by May 17, 2010.</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>

<p>demand (5-day) ("BOD₅") of 100 milligrams per liter ("mg/L") and pH between 6.0 - 9.0 standard units ("su"). Specifically, BOD₅ results for the July 22, 2009 sample was 205 mg/L and for the July 28, 2009 sample was 106 mg/L and the pH for February 2009 was 9.1 su [Permit No. WQ0012740001, Part IV, Effluent Limitations and Monitoring Requirements No. A. and 30 TEX. ADMIN. CODE § 305.125(1)].</p> <p>5) Failed to timely submit noncompliance notification for any effluent violation which deviates from the permitted effluent limitation by greater than 40% and for unauthorized discharges in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance. Specifically, the noncompliance notifications for the BOD₅ exceedance documented on July 22, 2009 and for the unauthorized discharge of March 16, 2010 were not received until May 17, 2010 [Permit No. WQ0012740001, Part VII, Standard Provisions Nos. 2.a., 2.b., and 2.c. and 30 TEX. ADMIN. CODE § 305.125(1) and (9)].</p> <p>6) Failed to prevent cross connection with a potable water system. Specifically, the backflow prevention device had not been annually tested since August 15, 2008 and it did not have the required reduced-pressure principle backflow prevention assembly [30 TEX. ADMIN. CODE § 309.20(b)(5)(B)(iii)].</p>		
---	--	--

Additional ID No(s): WQ0012740001

Attachment A
Docket Number: 2010-0749-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of New Deal

Payable Penalty Amount: Six Thousand Five Hundred Seventy-Eight Dollars (\$6,578)

SEP Amount: Six Thousand Five Hundred Seventy-Eight Dollars (\$6,578)

Type of SEP: Pre-approved

Third-Party Recipient: Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")-Abandoned Tire Clean-Up

Location of SEP: Lubbock 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 the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Texas Association of Resource Conservation and Development Areas, Inc. to be used for the RC&D Abandoned Tire Clean-Up Program as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to clean-up sites where tires have been disposed of illegally. Eligible sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping. SEP monies will be used to pay for the direct cost of collecting and disposing of tires. 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 providing for the proper disposal of tires and by reducing health threats associated with illegally dumped tires. Illegal tire dumpsites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of surface water, ground water, and soil.

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:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP amount, the Respondent shall provide the Enforcement Division 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 Enforcement Division 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	10-May-2010	Screening	11-May-2010	EPA Due	
	PCW	11-May-2010				

RESPONDENT/FACILITY INFORMATION

Respondent	City of New Deal		
Reg. Ent. Ref. No.	RN102178852		
Facility/Site Region	2-Lubbock	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	39654	No. of Violations	5
Docket No.	2010-0749-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Jorge Ibarra, P.E.
		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**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts	\$586	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$3,600	

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 11-May-2010

Docket No. 2010-0749-MWD-E

PCW

Respondent City of New Deal

Policy Revision 2 (September 2002)

Case ID No. 39654

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102178852

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

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)	2	10%
	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) 10%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

The Respondent was issued two NOVs with the same/similar type of violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 11-May-2010	Docket No. 2010-0749-MWD-E	PCW
Respondent City of New Deal		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 39654		<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No. RN102178852		
Media [Statute] Water Quality		
Enf. Coordinator Jorge Ibarra, P.E.		
Violation Number	1	
Rule Cite(s)	Permit No. WQ0012740001, Part VI, Special Provision No. 3 and 30 Tex. Admin. Code § 305.125(1)	
Violation Description	Failed to properly operate and maintain the Facility and all of its systems of collection, treatment, and disposal. Specifically, the Respondent failed to annually calibrate the secondary effluent flow meter which measures effluent used for irrigation.	
	Base Penalty	\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
		Major	Moderate	Minor	
	Release				
	Actual				
	Potential			x	Percent 5%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor		Percent 0%

Matrix Notes Failure to annually calibrate the secondary effluent flow meter could result in the release of insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1 59 Number of violation days

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

Violation Base Penalty \$500

One single event is recommended.

Good Faith Efforts to Comply 10.0% Reduction \$50

	Before NOV	NOV to EDPRP/Settlement
Extraordinary		
Ordinary		x
N/A	(mark with x)	

Notes The Respondent achieved compliance by May 14, 2010 for this violation.

Violation Subtotal \$450

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount \$552	Violation Final Penalty Total \$536
This violation Final Assessed Penalty (adjusted for limits) \$536	

Economic Benefit Worksheet

Respondent City of New Deal
Case ID No. 39654
Reg. Ent. Reference No. RN102178852
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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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]	\$500	17-Mar-2009	11-May-2010	2.07	\$52	\$500	\$552
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to begin calibrating the secondary effluent flow meter annually. Date Required is a year before the investigation date, Final Date is the screening date.

Approx. Cost of Compliance

\$500

TOTAL

\$552

Screening Date 11-May-2010	Docket No. 2010-0749-MWD-E	PCW														
Respondent City of New Deal		<small>Policy Revision 2 (September 2002)</small>														
Case ID No. 39654		<small>PCW Revision October 30, 2008</small>														
Reg. Ent. Reference No. RN102178852																
Media [Statute] Water Quality																
Enf. Coordinator Jorge Ibarra, P.E.																
Violation Number <input type="text" value="2"/>																
Rule Cite(s)	Permit No. WQ0012740001, Part VI, Special Provision No. 7, Part VII, Standard Provision No. 2.b., 30 Tex. Admin. Code § 305.125(1), (4) and (5), and Tex. Water Code § 26.121(a)															
Violation Description	Failed to prevent an unauthorized discharge of an unknown amount of wastewater from the holding ponds due to failure to maintain at least two feet of freeboard at the holding ponds. Specifically, a discharge of wastewater was noted from the northeast corner of the northern holding pond, running directly into a nearby playa lake bottom.															
	Base Penalty	<input type="text" value="\$10,000"/>														
>> Environmental, Property and Human Health Matrix																
	Harm															
	Major Moderate Minor															
OR	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <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> </tr> <tr> <td style="text-align: center;">Actual</td> <td style="text-align: center;"><input type="text"/></td> <td style="text-align: center;"><input checked="" type="text" value="x"/></td> <td style="text-align: center;"><input type="text"/></td> </tr> <tr> <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>	Release	Major	Moderate	Minor	Actual	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="25%"/>		
Release	Major	Moderate	Minor													
Actual	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>													
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>													
>>Programmatic Matrix																
	Major Moderate Minor															
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">Falsification</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> </tr> <tr> <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>	Falsification	Major	Moderate	Minor	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>						
Falsification	Major	Moderate	Minor													
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>													
Matrix Notes	Failure to prevent the unauthorized discharge of wastewater from the holding ponds and to maintain at least two feet of freeboard at the holding ponds resulted in the release of significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.															
	Adjustment	<input type="text" value="\$7,500"/>														
		<input type="text" value="\$2,500"/>														
Violation Events																
	Number of Violation Events <input type="text" value="2"/>	<input type="text" value="56"/> Number of violation days														
<i>mark only one with an x</i>	<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"/></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 checked="" type="text" value="x"/></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>	daily	<input type="text"/>	weekly	<input type="text"/>	monthly	<input checked="" type="text" value="x"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>	Violation Base Penalty <input type="text" value="\$5,000"/>
daily	<input type="text"/>															
weekly	<input type="text"/>															
monthly	<input checked="" type="text" value="x"/>															
quarterly	<input type="text"/>															
semiannual	<input type="text"/>															
annual	<input type="text"/>															
single event	<input type="text"/>															
	Two monthly events are recommended from the investigation date of March 16, 2010 to the compliance date of March 22, 2010.															
Good Faith Efforts to Comply	25.0% Reduction	<input type="text" value="\$1,250"/>														
	Before NOV NOV to EDPRP/Settlement Offer															
Extraordinary	<input type="text"/>	<input type="text"/>														
Ordinary	<input checked="" type="text" value="x"/>	<input type="text"/>														
N/A	<input type="text"/>	<input type="text" value="(mark with x)"/>														
Notes	The Respondent achieved compliance by March 22, 2010 for this violation.															
	Violation Subtotal	<input type="text" value="\$3,750"/>														
Economic Benefit (EB) for this violation		Statutory Limit Test														
Estimated EB Amount <input type="text" value="\$1"/>		Violation Final Penalty Total <input type="text" value="\$4,556"/>														
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$4,556"/>														

Economic Benefit Worksheet

Respondent City of New Deal
Case ID No. 39654
Reg. Ent. Reference No. RN102178852
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,500	16-Mar-2010	22-Mar-2010	0.02	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to pump out the holding ponds and maintain at least two feet of freeboard to eliminate future unauthorized discharges of wastewater. Date Required is the investigation date, Final Date is the compliance date.

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

\$1,500

TOTAL

\$1

Screening Date 11-May-2010 **Docket No.** 2010-0749-MWD-E **PCW**
Respondent City of New Deal *Policy Revision 2 (September 2002)*
Case ID No. 39654 *PCW Revision October 30, 2009*

Reg. Ent. Reference No. RN102178852
Media [Statute] Water Quality
Enf. Coordinator Jorge Ibarra, P.E.

Violation Number

Rule Cite(s)
 Permit No. WQ0012740001, Part IV, Effluent Limitations and Monitoring Requirements No. A. and 30 Tex. Admin. Code § 305.125(1)

Violation Description
 Failed to comply with permit effluent limits for biochemical oxygen demand (5-day ("BOD5")) of 100 milligrams per liter ("mg/L") and pH between 6.0 - 9.0 standard units ("su"). Specifically, BOD5 results for the July 22, 2009 sample was 205 mg/L and for the July 28, 2009 sample was 106 mg/L and the pH for February 2009 was 9.1 su.

Base Penalty

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	Percent <input type="text" value="10%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

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

Matrix Notes

Failure to comply with permit effluent limits for BOD5 and pH resulted in the release of insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events **Number of violation days**

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input checked="" type="checkbox"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Two quarterly events are recommended.

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>
N/A	<input type="text"/>	(mark with x)

Notes
 The Respondent achieved compliance by August 31, 2009 for this violation.

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent City of New Deal
Case ID No. 39654
Reg. Ent. Reference No. RN102178852
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	28-Feb-2009	31-Aug-2009	0.50	\$25	n/a	\$25

Notes for DELAYED costs: Estimated cost to pump sufficient water into the ponds to obtain proper dilution so that effluent parameters are maintained within permitted limits. Date Required is the first date of non-compliance, Final Date is the compliance date.

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 \$1,000

TOTAL \$25

Screening Date 11-May-2010 **Docket No.** 2010-0749-MWD-E **PCW**
Respondent City of New Deal *Policy Revision 2 (September 2002)*
Case ID No. 39654 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN102178852
Media [Statute] Water Quality
Enf. Coordinator Jorge Ibarra, P.E.

Violation Number
Rule Cite(s)

Permit No. WQ0012740001, Part VII, Standard Provisions No. 2.a., 2.b., and 2.c. and 30 Tex. Admin. Code § 305.125(1) and (9)

Violation Description
 Failed to timely submit noncompliance notification for any effluent violation which deviates from the permitted effluent limitation by greater than 40% and for unauthorized discharges in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance. Specifically, the noncompliance notifications for the BOD5 exceedance documented on July 22, 2009 and for the unauthorized discharge of March 16, 2010 were not received until May 17, 2010.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Matrix Notes	Falsification			Percent
	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text" value="1%"/>

Less than 30% of the rule requirement was not met.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>

Violation Base Penalty

Two single events are recommended.

Good Faith Efforts to Comply

0.0% Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent City of New Deal
Case ID No. 39654
Reg. Ent. Reference No. RN102178852
Media Water Quality
Violation No. 4

Percent Interest:	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	27-Jul-2009	17-May-2010	0.81	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to submit the required noncompliance notifications. Date Required is the date the noncompliance notification was due, Final Date is the compliance date.

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

\$100

TOTAL

\$4

Screening Date 11-May-2010 **Docket No.** 2010-0749-MWD-E **PCW**
Respondent City of New Deal *Policy Revision 2 (September 2002)*
Case ID No. 39654 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102178852
Media [Statute] Water Quality
Enf. Coordinator Jorge Ibarra, P.E.
Violation Number 5
Rule Cite(s) 30 Tex. Admin. Code § 309.20(b)(5)(B)(iii)
Violation Description Failed to prevent cross connection with a potable water system. Specifically, the backflow prevention device had not been annually tested since August 15, 2008 and it did not have the required reduced-pressure principle backflow prevention assembly.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential		X		

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Failure to install and test a backflow prevention device could result in the release of significant amounts of pollutants to the potable water system which would not exceed levels that are protective of human health as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes The Respondent achieved compliance by May 13, 2010 for this violation.

Violation Subtotal \$900

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$1,072

This violation Final Assessed Penalty (adjusted for limits) \$1,072

Economic Benefit Worksheet

Respondent City of New Deal
Case ID No. 39654
Reg. Ent. Reference No. RN102178852
Media Water Quality
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	16-Mar-2010	13-May-2010	0.16	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to install and properly test a backflow prevention device. Date Required is the investigation date, Final Date is the compliance date.

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

\$500

TOTAL

\$4

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600685440	City of New Deal	Classification: AVERAGE	Rating: 1.79
Regulated Entity:	RN102178852	CITY OF NEW DEAL	Classification: AVERAGE	Site Rating: 0.57
ID Number(s):	WASTEWATER WASTEWATER LICENSING	PERMIT LICENSE		WQ0012740001 WQ0012740001
Location:	approximately one mile east of New Deal on County Road ("CR") 57 on the northwest corner of the intersection of CRs 57 and 25 in Lubbock County, Texas			
TCEQ Region:	REGION 02 - LUBBOCK			
Date Compliance History Prepared:	May 10, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 10, 2005 to May 10, 2010			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 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	06/09/2005	(381385)
2	10/11/2006	(515410)
3	05/15/2007	(560331)
4	08/01/2008	(688275)
5	08/21/2008	(699697)
6	11/03/2008	(706912)
7	05/04/2010	(800271)

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

Date: 08/01/2008 (688275) CN600685440
 Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 317 317.4(a)(8)

Description: Failure to have backflow devices installed and tested as required. One (1) potable water line runs to the wastewater treatment plant. There are two (2) faucets, on the line, at the plant. One of the faucets is below ground level. The faucets have vacuum breakers on them, but no backflow prevention could be verified.

Date: 11/04/2008 (706912) CN600685440

Self Report? NO

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)

2D TWC Chapter 26, SubChapter A 26.121(a)(1)

2D TWC Chapter 26, SubChapter A 26.121(a)(3)

2D TWC Chapter 26, SubChapter A 26.121(b)

2D TWC Chapter 26, SubChapter A 26.121(c)

2D TWC Chapter 26, SubChapter A 26.121(d)

2D TWC Chapter 26, SubChapter A 26.121(e)

30 TAC Chapter 305, SubChapter F 305.125(4)

30 TAC Chapter 305, SubChapter F 305.125(5)

Permit Number WQ0012740-001 PERMIT

TWC Chapter 26 26.121

TWC Chapter 26 26.121(a)(2)

Description: Failure to prevent sanitary sewer overflows / unauthorized discharges from occurring.

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 NEW DEAL
RN102178852

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2010-0749-MWD-E

I. JURISDICTION AND STIPULATIONS

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

1. The Respondent owns and operates a wastewater treatment facility located approximately one mile east of New Deal on County Road ("CR") 57 on the northwest corner of the intersection of CRs 57 and 25 in Lubbock County, Texas (the "Facility").
2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 12, 2010.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Eight Thousand Two Hundred Twenty-Two Dollars (\$8,222) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations") and One Thousand Six Hundred Forty-Four Dollars (\$1,644) is deferred contingent upon the Respondent'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 Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty. Six Thousand Five Hundred Seventy-Eight Dollars (\$6,578) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent 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 Respondent has implemented the following corrective measures at the Facility:
 - a. Flushed water into the ponds to maintain proper dilution and effluent parameters within permitted limits by August 31, 2009;
 - b. Pumped out the holding ponds and began maintaining at least two feet of freeboard to eliminate future unauthorized discharges of wastewater by March 22, 2010;
 - c. Installed and properly tested the backflow prevention device by May 13, 2010;
 - d. Began calibrating the secondary effluent flow meter annually by May 14, 2010; and
 - e. Submitted the required noncompliance notifications by May 17, 2010.
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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to properly operate and maintain the Facility and all of its systems of collection, treatment, and disposal, in violation of Permit No. WQ0012740001, Part VI, Special Provision No. 3 and 30 TEX. ADMIN. CODE § 305.125(1), as documented during an investigation conducted on March 16,

2010. Specifically, the Respondent failed to annually calibrate the secondary effluent flow meter which measures effluent used for irrigation.
2. Failed to prevent an unauthorized discharge of an unknown amount of wastewater from the holding ponds, in violation of Permit No. WQ0012740001, Part VI, Special Provision No. 7, Part VII, Standard Provision No. 2.b., 30 TEX. ADMIN. CODE § 305.125(1), (4) and (5), and TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on March 16, 2010. Specifically, a discharge of wastewater was noted from the northeast corner of the northern holding pond, running directly into a nearby playa lake bottom.
 3. Failed to maintain at least two feet of freeboard at the holding ponds, in violation of Permit No. WQ0012740001, Part VI, Special Provisions No. 7 and 30 TEX. ADMIN. CODE § 305.125(1), as documented during an investigation conducted on March 16, 2010. Specifically, both holding ponds were found to have less than one foot of freeboard at the time of the investigation.
 4. Failed to comply with permit effluent limits for biochemical oxygen demand (5-day) ("BOD5") of 100 milligrams per liter ("mg/L") and pH between 6.0 - 9.0 standard units ("su"), in violation of Permit No. WQ0012740001, Part IV, Effluent Limitations and Monitoring Requirements No. A. and 30 TEX. ADMIN. CODE § 305.125(1), as documented during an investigation conducted on March 16, 2010. Specifically, BOD5 results for the July 22, 2009 sample was 205 mg/L and for the July 28, 2009 sample was 106 mg/L and the pH for February 2009 was 9.1 su.
 5. Failed to timely submit noncompliance notification for any effluent violation which deviates from the permitted effluent limitation by greater than 40% and for unauthorized discharges in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance, in violation of Permit No. WQ0012740001, Part VII, Standard Provisions Nos. 2.a., 2.b., and 2.c. and 30 TEX. ADMIN. CODE § 305.125(1) and (9), as documented during an investigation conducted on March 16, 2010. Specifically, the noncompliance notifications for the BOD5 exceedance documented on July 22, 2009 and for the unauthorized discharge of March 16, 2010 were not received until May 17, 2010.
 6. Failed to prevent cross connection with a potable water system, in violation of 30 TEX. ADMIN. CODE § 309.20(b)(5)(B)(iii), as documented during an investigation conducted on March 16, 2010. Specifically, the backflow prevention device had not been annually tested since August 15, 2008 and it did not have the required reduced-pressure principle backflow prevention assembly.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent'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 New Deal, Docket No. 2010-0749-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 Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Six Thousand Five Hundred Seventy-Eight Dollars (\$6,578) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent'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 Respondent. The Respondent 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 Respondent 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 Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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.

7. 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.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, 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 Szellier
For the Executive Director

9/2/2010
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.

Emsley L. Baker Jr.
Signature

July 22, 2010
Date

Emsley L. Baker Jr.
Name (Printed or typed)
Authorized Representative of
City of New Deal

Mayor
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: 2010-0749-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of New Deal
Payable Penalty Amount: Six Thousand Five Hundred Seventy-Eight Dollars (\$6,578)
SEP Amount: Six Thousand Five Hundred Seventy-Eight Dollars (\$6,578)
Type of SEP: Pre-approved
Third-Party Recipient: Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")-Abandoned Tire Clean-Up
Location of SEP: Lubbock 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 the SEP offset amount to the Third-Party Recipient named above. The contribution will be to Texas Association of Resource Conservation and Development Areas, Inc. to be used for the RC&D Abandoned Tire Clean-Up Program as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to clean-up sites where tires have been disposed of illegally. Eligible sites will be limited to those where a responsible party cannot be found and where reasonable efforts have been made to prevent the dumping. SEP monies will be used to pay for the direct cost of collecting and disposing of tires. 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 providing for the proper disposal of tires and by reducing health threats associated with illegally dumped tires. Illegal tire dumpsites can become breeding grounds for mosquitoes and rodents which carry disease. The potential for tire fires is also reduced by removing illegally dumped tires. Tire fires can result in the contamination of surface water, ground water, and soil.

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:

Texas Association of Resource Conservation and Development Areas, Inc.
1716 Briarcrest Drive, Suite 510
Bryan, Texas 77802-2700

3. Records and Reporting

Concurrent with the payment of the SEP amount, the Respondent shall provide the Enforcement Division 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 Enforcement Division 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.

