

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2009-1901-MWD-E RN103029286 CASE NO. 38763
RESPONDENT NAME: WESTLAKE MUNICIPAL UTILITY DISTRICT NO. 1

ORDER TYPE:		
<input type="checkbox"/> AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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

SITE WHERE VIOLATIONS OCCURRED: 2631 Greenhouse Road, Harris County

TYPE OF OPERATION: wastewater treatment plant

SMALL BUSINESS: Yes No N/A

OTHER SIGNIFICANT MATTERS: There are no complaints related to this enforcement action. There is no record of additional pending enforcement actions regarding this facility location

INTERESTED PARTIES: No one other than the ED and Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired January 10, 2011. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Anna M. Treadwell, Litigation Division, MC 175, (512) 239-3400
 Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Cheryl Thompson, Water Enforcement Section, MC R-4, (817) 588-5886

TCEQ Regional Contact: Stephen L. Smith, Houston Regional Office, MC R-12, (713) 767-3581

TCEQ SEP Coordinator: Sharon Blue, Litigation Division, MC 175, (512) 239-3400

Respondent: Joe Calderon, President, Westlake Municipal Utility District No. 1, 1300 Post Oak Boulevard, Suite 1400, Houston, Texas 77056-3078

Respondent's Attorney: Brad B. Castleberry, Lloyd Gosselink Rochelle & Townsend, P.C, 816 Congress Avenue, Suite 1900, Austin, Texas 78701

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaint(s): N/A</p> <p>Date of Investigation: September 23, 2009</p> <p>Date of NOE: November 8, 2009</p> <p>Background Facts: The EDRP was filed on April 15, 2010. Respondent filed an answer and the case was referred to SOAH. The Agreed Order was signed on October 28, 2010.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation demonstrating compliance with the technical requirements.</p> <p>WQ:</p> <ol style="list-style-type: none"> Failed to comply with permitted effluent limits by exceeding maximum limits for total mercury for the months of April and May 2009 [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0011284001, Effluent Limitations and Monitoring Requirements, No. 1]. Failed to comply with permitted effluent limits by exceeding maximum limits for total mercury for the month of June 2009 [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0011284001, Effluent Limitations and Monitoring Requirements, No. 1]. 	<p>Total Assessed: \$18,875</p> <p>Total Deferred: \$18,875 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$18,875</p> <p>Total Paid/Due to General Revenue: \$0</p> <p>Respondent shall contribute \$18,875 to a Supplemental Environmental Project (SEP).</p> <p>Compliance History Classifications: <i>Person/CN</i> – Average <i>Site/RN</i> – Average</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Order Justification: Three enforcement actions for the same violation in the preceding five-year period.</p>	<p>Ordering Provisions:</p> <p>Respondents shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately, ensure compliance with applicable permitted effluent limitations, with the exception of the permitted effluent limitation for total mercury addressed by Ordering Provision Nos. 2 and 3, below. Within 30 days, submit monitoring reports, including self-reporting discharge monitoring reports, for all current permitting effluent limitations, including total mercury as required by TPDES Permit No. WQ0011284001. Within 60 days, prepare and file an application to amend TPDES Permit No. WQ0011284001. Respond completely and adequately to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing; Within 300 days, submit certification demonstrating compliance with permitted effluent limitations, including specific corrective actions implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted limitations. Implement and complete a SEP (Galveston Bay Foundation - Galveston Bay Restoration Marsh Mania Project – San Jacinto River Basin)

Attachment A
Docket Number: 2009-1901-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Westlake Municipal Utility District No. 1

Penalty Amount: Eighteen Thousand Eight Hundred Seventy-Five Dollars (\$18,875)

SEP Offset Amount: Eighteen Thousand Eight Hundred Seventy-Five Dollars (\$18,875)

Type of SEP: Pre-approved

Third-Party Recipient: **Galveston Bay Foundation;** *The Galveston Bay Restoration Marsh Mania Project*

Location of SEP: Harris County; San Jacinto River Basin

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 Offset 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 used by **Galveston Bay Foundation** for *The Galveston Bay Restoration Marsh Mania Project* to be used as set forth in an agreement between the Third-Party Recipient and the TCEQ. SEP funds will be used for restoring shoreline elevations, growing plants for shoreline restoration, and planting new habitat. Historic subsidence and erosion have resulted in shoreline elevations which are too low to support vegetation. This project will seek to raise elevations by scraping and terracing. Scraping involves the use of earthmoving equipment to grade an eroded, bluff-like shoreline so that it slopes gradually towards the water resulting in the ability of plant growth. Terracing uses earthmoving equipment to create small levees by burrowing and stacking sediment in shallow water. The higher elevation can then be planted with emergent vegetation. SEP monies will be used to pay for the direct cost of the implementation of the project, including material, equipment and labor costs.

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 it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing food and shelter for a variety of native fish, shellfish, birds, and mammals. The marshes will also result in the reduction of pollution by filtering particulates and excess nutrients from runoff. In addition, the new habitat will protect shorelines from erosion and will help reduce the effects of flooding.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset 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 Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the Agreed Order with the contribution to:

Bob Stokes
President, General Council
Galveston Bay Foundation
17234-A Highway 3
Webster, TX 77598

3. Records and Reporting

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

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset 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 Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

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 a 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	16-Nov-2009			
	PCW	30-Nov-2009	Screening	23-Nov-2009	EPA Due 5-Sep-2009

RESPONDENT/FACILITY INFORMATION					
Respondent	Westlake Municipal Utility District No. 1				
Reg. Ent. Ref. No.	RN103029286				
Facility/Site Region	12-Houston	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	38763	No. of Violations	2		
Docket No.	2009-1901-MWD-E	Order Type	Findings		
Media Program(s)	Water Quality	Government/Non-Profit	Yes		
Multi-Media		Enf. Coordinator	Cheryl Thompson		
		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	\$12,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	51.0% Enhancement	Subtotals 2, 3, & 7	\$6,375
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Notes	The Respondent has self-reported eight months of effluent violations, one NOV for same or similar violations and three NOVs for dissimilar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$710	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$10,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$18,875
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$18,875
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$18,875
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	No deferral is recommended for Findings Orders.
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PAYABLE PENALTY	\$18,875
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Screening Date 23-Nov-2009

Docket No. 2009-1901-MWD-E

PCW

Respondent Westlake Municipal Utility District No. 1

Policy Revision 2 (September 2002)

Case ID No. 38763

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103029286

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	9	45%
	Other written NOVs	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 51%

>> 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 has self-reported eight months of effluent violations, one NOV for same or similar violations and three NOVs for dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 51%

Screening Date	23-Nov-2009	Docket No.	2009-1901-MWD-E	PCW
Respondent	Westlake Municipal Utility District No. 1			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	38763			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN103029286			
Media [Statute]	Water Quality			
Enf. Coordinator	Cheryl Thompson			
Violation Number	1			
Rule Cite(s)	Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011284001, 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 permitted effluent limits, as documented during a record review conducted on September 23, 2009. See attached table.			
		Base Penalty	\$10,000	

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes: A simplified model was used to evaluate total mercury to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. As a result of these discharges, human health or the environment has been exposed to significant amounts of pollutants which exceed levels that are protective of human health or the environment.

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

Two monthly events are recommended for the months of April and May 2009.

Good Faith Efforts to Comply Reduction

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

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

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Westlake Municipal Utility District No. 1
Case ID No. 38763
Reg. Ent. Reference No. RN103029286
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				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	\$10,000	30-Apr-2009	30-Sep-2010	1.42	\$710	n/a	\$710
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost to evaluate the causes of the effluent violations and to implement necessary rehabilitation to the wastewater system. Date required is the month the first non-compliant excursion was documented. Final date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,000

TOTAL

\$710

Screening Date 23-Nov-2009 **Docket No.** 2009-1901-MWD-E **PCW**
Respondent Westlake Municipal Utility District No. 1 *Policy Revision 2 (September 2002)*
Case ID No. 38763 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN103029286
Media [Statute] Water Quality
Enf. Coordinator Cheryl Thompson

Violation Number 2
Rule Cite(s) TPDES Permit No. WQ0011284001, 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 permitted effluent limits, as documented during a record review conducted on September 23, 2009. See attached table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual		x		25%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes A simplified model was used to evaluate total mercury to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. As a result of these discharges, human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or the environment.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 30 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One monthly event is recommended for the month of June 2009.

Good Faith Efforts to Comply 0.0% Reduction \$0

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

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$0 **Violation Final Penalty Total** \$3,775

This violation Final Assessed Penalty (adjusted for limits) \$3,775

Economic Benefit Worksheet

Respondent Westlake Municipal Utility District No. 1
Case ID No. 38763
Reg. Ent. Reference No. RN103029286
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See violation #1

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator: CN601360423 Westlake Municipal Utility District No. 1 Classification: AVERAGE Rating: 0.64
 Regulated Entity: RN103029286 WESTLAKE MUD 1 WWTP Classification: AVERAGE Site Rating: 0.64

WASTEWATER	PERMIT	WQ0011284001
WASTEWATER	EPA ID	TPDES0053091
WASTEWATER	PERMIT	TPDES0053091
WASTEWATER	PERMIT	TX0053091
WASTEWATER LICENSING	LICENSE	WQ0011284001

Location: 2631 Greenhouse Road, approximately 800 feet north of the intersection of Saums Road and Greenhouse Road in Harris County, Texas

TCEQ Region: REGION 12 - HOUSTON
 Date Compliance History Prepared: December 01, 2009
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: November 23, 2004 to November 23, 2009

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

Name: Cheryl Thompson Phone: (817)588-5886

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 judgments, 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	12/20/2004	(384332)
2	02/21/2005	(384330)
3	03/21/2005	(384331)
4	04/20/2005	(422271)
5	05/19/2005	(422272)
6	05/19/2005	(422274)
7	06/21/2005	(422273)
8	07/07/2005	(397026)
9	09/06/2005	(443183)
10	09/21/2005	(443184)
11	09/28/2005	(431666)
12	10/20/2005	(581455)
13	11/17/2005	(581457)
14	12/20/2005	(581459)
15	02/21/2006	(581441)
16	02/24/2006	(593267)
17	03/20/2006	(581443)
18	03/21/2006	(581461)
19	05/24/2006	(581445)
20	05/24/2006	(581447)
21	06/20/2006	(581449)
22	07/12/2006	(481188)
23	08/21/2006	(581453)
24	09/18/2006	(593269)
25	09/29/2006	(581451)
26	09/29/2006	(581454)
27	11/27/2006	(581456)

28	11/27/2006	(581458)
29	12/22/2006	(581460)
30	02/27/2007	(581442)
31	03/26/2007	(581444)
32	04/04/2007	(593268)
33	04/20/2007	(581446)
34	04/20/2007	(581462)
35	05/15/2007	(581448)
36	06/18/2007	(581450)
37	07/18/2007	(581452)
38	08/22/2007	(608133)
39	09/19/2007	(608134)
40	10/05/2007	(608136)
41	10/29/2007	(608135)
42	11/15/2007	(621712)
43	12/18/2007	(621713)
44	12/20/2007	(612263)
45	02/21/2008	(673659)
46	03/19/2008	(673660)
47	04/23/2008	(673661)
48	05/16/2008	(691911)
49	06/16/2008	(691912)
50	07/15/2008	(691913)
51	08/26/2008	(712920)
52	09/23/2008	(712921)
53	10/21/2008	(712922)
54	11/20/2008	(729134)
55	12/11/2008	(729135)
56	01/15/2009	(729136)
57	02/16/2009	(752301)
58	03/11/2009	(752302)
59	04/16/2009	(752303)
60	05/26/2009	(769958)
61	06/11/2009	(769959)
62	10/08/2009	(774962)
63	11/13/2009	(777100)

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

- 1 Date: 06/30/2005 (422274) CN601360423
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
- 2 Date: 07/01/2005 (397026) CN601360423
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
 30 TAC Chapter 317 317.4(d)
 Description: Failure to maintain the clarifiers in such a manner as to prevent the short circuiting of water over the weirs.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to maintain the chlorine level in the final effluent within permitted guidelines.
- 3 Date: 02/24/2006 (593267) CN601360423
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 30 TAC Chapter 305, SubChapter F 305.125(17)
 Description: NON-RPT VIOS FOR MONIT PER OR PIPE
- 4 Date: 05/31/2006 (581449) CN601360423
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
- 5 Date: 08/31/2006 (581454) CN601360423
 Self Report? YES Classification: Moderate

	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description:	TWC Chapter 26 26.121(a)		
6	Date:	09/18/2006 (593269)		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description:	30 TAC Chapter 305, SubChapter F 305.125(17)		
7	Date:	04/04/2007 (593268)		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description:	30 TAC Chapter 305, SubChapter F 305.125(17)		
8	Date:	08/31/2007 (608134)	CN601360423	
	Self Report?	YES	Classification:	Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
	Description:	30 TAC Chapter 305, SubChapter F 305.125(1)		
9	Date:	06/30/2008 (691913)	CN601360423	
	Self Report?	YES	Classification:	Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
	Description:	30 TAC Chapter 305, SubChapter F 305.125(1)		
10	Date:	04/30/2009 (769958)	CN601360423	
	Self Report?	YES	Classification:	Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
	Description:	30 TAC Chapter 305, SubChapter F 305.125(1)		
11	Date:	05/31/2009 (769959)	CN601360423	
	Self Report?	YES	Classification:	Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
	Description:	30 TAC Chapter 305, SubChapter F 305.125(1)		
12	Date:	06/30/2009	CN601360423	
	Self Report?	YES	Classification:	Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a)		
	Description:	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
WESTLAKE MUNICIPAL
UTILITY DISTRICT NO. 1;
RN103029286**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2009-1901-MWD-E

At its _____ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Westlake Municipal Utility District No. 1 (“Respondent”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Brad Castleberry of the law firm of Lloyd Gosselink Rochelle & Townsend, P.C., presented this agreement to the Commission.

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

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

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

FINDINGS OF FACT

1. Respondent owns and operates a wastewater treatment plant located at 2631 Greenhouse Road, approximately 800 feet north of the intersection of Saums Road and Greenhouse Road, Harris County, Texas (the “Facility”).

2. Respondent has discharged waste from the Facility into or adjacent to any water in the state or has committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
3. During a record review conducted on September 23, 2009, a TCEQ Central Office staff member documented that Respondent:
 - a. Failed to comply with permitted effluent limits by exceeding maximum limits for total mercury for the months of April and May 2009. See Table below; and
 - b. Failed to comply with permitted effluent limits by exceeding maximum limits for total mercury for the month of June 2009. See Table below.

Table of Exceeded Permit Effluent Limits 1
Westlake Municipal Utility District No. 1

	Total Mercury Daily Average Concentration	Total Mercury Daily Maximum Concentration	Total Mercury Daily Average
Month/Year	.000036 mg/L	.000072 mg/L	.00027 lbs/day
Apr-09	0.0003	0.0004	0.0012
May-09	0.0005	0.0005	0.002
Jun-09	0.00014	0.0003	0.00059

milligrams per liter = mg/L pounds per day = lbs/day

4. Respondent received notice of the violations on or about November 13, 2009.

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Respondent failed to comply with permitted effluent limits for the months of April and May 2009, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0011284001, Effluent Limitations and Monitoring Requirements No. 1.
3. As evidenced by Finding of Fact No. 3.b., Respondent failed to comply with permitted effluent limits for the month of June 2009, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and TPDES Permit No. WQ0011284001, Effluent Limitations and Monitoring Requirements No. 1.

4. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
5. An administrative penalty in the amount of eighteen thousand eight hundred seventy-five dollars (\$18,875.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Pursuant to TEX. WATER CODE § 7.067, eighteen thousand eight hundred seventy-five dollars (\$18,875.00) of the administrative penalty shall be conditionally offset by Respondent's timely and satisfactory completion of a Supplemental Environmental Project ("SEP") as defined in the SEP Agreement ("Attachment A" - incorporated herein by reference). Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed by this Agreed Order shall be discharged upon full compliance with all the terms and conditions of this Agreed Order, which includes timely and satisfactory completion of all provisions of the SEP Agreement as determined by the Executive Director.

ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent is assessed an administrative penalty in the amount of eighteen thousand eight hundred seventy-five dollars (\$18,875.00) as set forth in Conclusion of Law No. 5, above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here.
2. Respondent shall implement and complete a SEP as set forth in Conclusion of Law No. 5, above. The amount of eighteen thousand eight hundred seventy-five dollars (\$18,875.00) of the assessed administrative penalty is conditionally offset based on the condition that Respondent implement and complete a SEP pursuant to the terms and conditions contained in the SEP Agreement, as defined in Attachment A. Respondent's obligation to pay the conditionally offset portion of the assessed administrative penalty shall be discharged upon full, final, and satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director. Administrative penalty payments for any portion of the SEP deemed by the Executive Director as not complete shall be paid within 30 days after the date the Executive Director demands payment. Checks shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Westlake Municipal Utility District No. 1, Docket No. 2009-1901-MWD-E" to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. It is further ordered that the Respondent shall undertake the following technical requirements:
- a. Immediately after the effective date of this Agreed Order, ensure compliance with applicable permitted effluent limitations, with the exception of the permitted effluent limitation for total mercury addressed by the Ordering Provisions below.
 - b. Within 30 days after the effective date of this Agreed Order, submit monitoring reports, including self-reporting discharge monitoring reports, for all current permitting effluent limitations, including total mercury as required by TPDES Permit No. WQ0011284001;
 - c. Within 60 days after the effective date of this Agreed Order, prepare and file an application to amend TPDES Permit No. WQ0011284001 in accordance with 30 TEX. ADMIN. CODE ch. 305 to the Office of Permitting and Registration as identified herein:

Office of Permitting and Registration
Attention: Wastewater Permitting, MC 148
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088
 - d. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application in Ordering Provision No. 3.c. above within 30 days after the date of such requests or by any other deadline specified in writing.
 - e. Within 300 days after the effective date of this Agreed Order, Respondent shall submit certification of compliance with the permitted effluent limitations to address the violations of TPDES Permit No. WQ0011284001 in Finding of Fact No. 3 and Conclusions of Law Nos. 1 and 2, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted limitations. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Respondent shall submit copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Stephen Smith, Water Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Avenue, Suite H
Houston, Texas 77023-1452

4. All relief not expressly granted in this Agreed Order is denied.
5. The provisions of this Agreed Order shall apply to and be binding upon Respondent. 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.
6. If Respondent fails to comply with the Ordering Provision 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent has the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. 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 Respondent shall be made in writing to the Executive

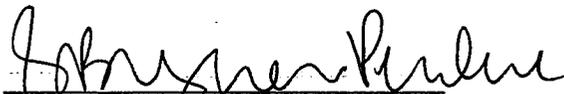
Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (“OAG”) for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. This Agreed Order, issued by the Commission, shall not be admissible against 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.
11. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format (“pdf”), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term “signature” shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms “electronic transmission” “owner” “person” “writing” and “written” shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
12. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to 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



For the Executive Director

4/7/2011

Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Westlake Municipal Utility District No. 1. I represent that I am authorized to agree to the attached Agreed Order on behalf of Westlake Municipal Utility District No. 1 and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

- § A negative impact on Respondent's compliance history;
- § Greater scrutiny of any permit applications submitted by Respondent;
- § 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 against Respondent;
- § Automatic referral to the Attorney General's Office of any future enforcement actions against Respondent; and
- § TCEQ seeking other relief as authorized by law.

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



Signature - Joe Calderon, President
Westlake Municipal Utility District No. 1

10/28/0

Date

Attachment A
Docket Number: 2009-1901-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: Westlake Municipal Utility District No. 1

Penalty Amount: Eighteen Thousand Eight Hundred Seventy-Five Dollars (\$18,875)

SEP Offset Amount: Eighteen Thousand Eight Hundred Seventy-Five Dollars (\$18,875)

Type of SEP: Pre-approved

Third-Party Recipient: **Galveston Bay Foundation;** *The Galveston Bay Restoration Marsh Mania Project*

Location of SEP: Harris County; San Jacinto River Basin

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 Offset 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 used by **Galveston Bay Foundation** for *The Galveston Bay Restoration Marsh Mania Project* to be used as set forth in an agreement between the Third-Party Recipient and the TCEQ. SEP funds will be used for restoring shoreline elevations, growing plants for shoreline restoration, and planting new habitat. Historic subsidence and erosion have resulted in shoreline elevations which are too low to support vegetation. This project will seek to raise elevations by scraping and terracing. Scraping involves the use of earthmoving equipment to grade an eroded, bluff-like shoreline so that it slopes gradually towards the water resulting in the ability of plant growth. Terracing uses earthmoving equipment to create small levees by burrowing and stacking sediment in shallow water. The higher elevation can then be planted with emergent vegetation. SEP monies will be used to pay for the direct cost of the implementation of the project, including material, equipment and labor costs.

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 it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by providing food and shelter for a variety of native fish, shellfish, birds, and mammals. The marshes will also result in the reduction of pollution by filtering particulates and excess nutrients from runoff. In addition, the new habitat will protect shorelines from erosion and will help reduce the effects of flooding.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset 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 Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the Agreed Order with the contribution to:

Bob Stokes
President, General Council
Galveston Bay Foundation
17234-A Highway 3
Webster, TX 77598

3. Records and Reporting

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

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset 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 Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

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 a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.