

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 3
DOCKET NO.: 2010-0907-MLM-E **TCEQ ID:** RN102328770 **CASE NO.:** 39780
RESPONDENT NAME: City of Newton

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 checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> USED OIL	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input checked="" type="checkbox"/> USED OIL FILTERS	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Newton Transfer Station Facility, 720 Jamestown Road, Newton, Newton County</p> <p>TYPE OF OPERATION: Transfer station and used oil collection center</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 March 14, 2011. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Ms. Sharon Blue, SEP Coordinator, Litigation Division, MC 175, (512) 239-2223 TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Enforcement Division, Enforcement Team 6, MC 128, (512) 239-0577; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Donald H. Meek, City Administrator, City of Newton, 101 West North Street, Newton, Texas 75966 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 4, 2010</p> <p>Date of NOV/NOE Relating to this Case: April 28, 2010 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failed to maintain a copy of the municipal solid waste ("MSW") permit or registration at the Facility or at an alternate location approved by the Executive Director. Specifically, a copy of the registration was not available for inspection [30 TEX. ADMIN. CODE § 330.219(a)].</p> <p>2) Failed to train all employees in fire protection and health and safety procedures. Specifically, the operator had not received the required fire safety training [30 TEX. ADMIN. CODE §§ 330.219(b)(2), 330.221(c) and 330.247].</p> <p>3) Failed to submit a permit modification application to incorporate the 2006 rule revisions to 30 TEX. ADMIN. CODE ch. 330. Specifically, the Respondent had not submitted a permit modification application to revise the Facility's Site Operating Plan ("SOP") by the due date of January 27, 2007 [30 TEX. ADMIN. CODE §§ 305.70(a) and 330.201(b)].</p> <p>4) Failed to register as a used oil collection center each odd numbered year no later than January 25 following the close of the year. Specifically, the registration expired on December 31, 2004 [30 TEX. ADMIN. CODE § 324.7(3)(B) and TEX. HEALTH & SAFETY CODE § 371.024(b)(1) and 40 CODE OF</p>	<p>Total Assessed: \$7,000</p> <p>Total Deferred: \$1,400 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$5,600</p> <p>Total Paid to General Revenue: \$0</p> <p>Compliance History Classifications: Person/CN - Average Site/RN - High</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, cease accepting used oil and used oil filters until properly registered;</p> <p>b. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Submit a properly completed used oil and used oil filter registration form;</p> <p>ii. Develop and implement a plan to submit annual reports for the used oil and used oil filter collection center by January 25 of each year;</p> <p>iii. Begin maintaining all required records including a copy of the MSW registration at the Facility or at an alternate location approved by the Executive Director; and</p> <p>c. With 45 days after the effective date of this Agreed Order:</p> <p>i. Submit an administratively complete permit modification application to update the Facility's SOP;</p> <p>ii. Ensure that all employees receive training in fire protection and health and safety procedures.</p> <p>d. Within 60 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. through c.ii.</p>

<p>FEDERAL REGULATIONS § 279.31(b)(2)].</p> <p>5) Failed to register or to renew the registration form as used oil filter processor and submit required reports. Specifically, the Respondent did not re-register the Facility as a used oil filter processor and did not submit reports showing the number of used oil filters collected. The registration expired on December 31, 2005 [30 TEX. ADMIN. CODE § 328.24(a) and (c), and TEX. HEALTH & SAFETY CODE § 371.024(b)(1) and 40 CODE OF FEDERAL REGULATIONS § 279.31(b)(2)].</p> <p>6) Failed to report annually the amount of used oil collected by January 25 of each year. Specifically, the annual reports had not been submitted since 2001 [30 TEX. ADMIN. CODE § 324.7(3)(E) and TEX. HEALTH & SAFETY CODE § 371.024(b)(2)].</p>		
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Additional ID No(s): MSW Registration 40106

Attachment A
Docket Number: 2010-0907-MLM-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Newton
Penalty Amount:	Five Thousand Six Hundred Dollars (\$5,600)
SEP Offset Amount:	Five Thousand Six Hundred Dollars (\$5,600)
Type of SEP:	Custom
Location of SEP:	Newton County; Sabine and Neches River Basins

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the Administrative Penalty Amount assessed in this Agreed Order for Respondent to perform a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

Respondent shall perform cleanup of an illegal trash dump along Meek Street between MLK Street and State Highway 87 and also along Sylvester Street northwest of MLK Street (the “project”) in Newton County, Texas. The project will utilize city crews and heavy equipment to collect and haul away discarded miscellaneous household items such as furniture, appliances, tires, and trash from the two sites. The collected waste will be transported to the Dewey Solid Waste Landfill, in Deweyville, Newton County, Texas.

Respondent shall:

- advertise for the cleanup and will include the required enforcement statement described in Section 6 below in the advertisement;
- provide supervision to ensure proper and complete removal of debris; and
- provide documentation of proper disposal or recycling of all wastes collected from the cleanup.

Respondent shall perform the project in accordance with all federal, state, and local environmental laws and regulations. Respondent shall spend the SEP Offset Amount only for the direct cost of implementing the project. No portion of the SEP Offset Amount shall be spent on administrative costs.

Respondent’s signature affixed to this Agreed Order certifies that there is no prior commitment to do the project and that the project is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

The project will help reduce the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects. The project will remove solid waste that has been disposed of and is considered detrimental to the environment.

City of Newton
Docket No. 2010-0907-MLM-E
Attachment A

C. Minimum Expenditure

Respondent shall spend at least the SEP Offset Amount to complete the project and shall comply with all other provisions of this Attachment A. Respondent understands that it may cost more than the SEP Offset Amount to complete the project.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent shall begin implementation of the project, and shall complete the project in its entirety within 365 days after the effective date of this Agreed Order.

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, Respondent shall submit a report to the TCEQ detailing the progress made on the project during the previous 60-day period and setting forth a schedule for achieving completion of the project within the time-frame required in Section 2, above. Thereafter, Respondent shall submit progress reports to the TCEQ in the following increments and containing detailed information as set forth in the table below:

Table 1: Required Information

Days from Effective Order Date	Required Information
90	Actions taken during the previous 60-day period to implement the project
180	Actions taken during the previous 90-day period to implement the project
270	Actions taken during the previous 90-day period to implement the project
365	Notice of project completion

B. Final Report

Within 60 days after completion of the project, and not later than 425 days after the effective date of the Agreed Order, Respondent shall submit a Final Report to the TCEQ which includes:

- An itemized list of expenditures and total of costs incurred to complete the project;
- Copies of invoices, paid receipts, cleared checks or payment records corresponding to the itemized list required in paragraph 3.B.1., above;
- Copies of proof of advertisement of the cleanup event (the advertisement must include a statement that the SEP was performed as a result of a TCEQ enforcement action);
- Copies of time sheets for employees who worked overtime on the project. Time sheets must be certified by payroll supervisor and include first and last name of the employee, the rate of pay per hour, and the total number of hours worked on the project;
- List of items collected from cleanup site(s);
- Copies of proof of advertisement of the cleanup event (the advertisement must include a

statement that the SEP was performed as a result of a TCEQ enforcement action) and proof of publication of invitation for (and selection of competitive bids for the project, if applicable);

- Photographs of the project in progress showing items collected and after the project is completed;
- Map showing exact location(s) of cleanup(s) clearly marked. The map must be of sufficient detail to allow TCEQ staff to verify the location of the completed project;
- Manifests sufficient to show proof of proper disposal and/or recycling of the collected items;
- A certified/notarized statement of quantifiable environmental benefit. Respondent must quantify the environmental benefit of the project; and
- Any additional information and supporting documentation to demonstrate completion of the project in compliance with this SEP agreement.

C. Address

Respondent shall submit all reports and supporting documentation required by this SEP agreement and any requested additional information to the following address:

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

3. Additional Information and Access

Respondent shall provide any additional information as required by TCEQ staff and shall allow access to all records related to the receipt and expenditure of SEP Offset Amount. Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP Offset Amount. This provision shall survive the termination of this Agreed Order.

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 Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall 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 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

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program. Similarly, 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 Respondent under any other orders 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	24-May-2010			
	PCW	26-May-2010	Screening	26-May-2010	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Newton
Reg. Ent. Ref. No.	RN102328770
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39780	No. of Violations	3
Docket No.	2010-0907-MLM-E	Order Type	1660
Media Program(s)	Used Oil and Used Oil Filters	Government/Non-Profit	Yes
Multi-Media	Municipal Solid Waste	Enf. Coordinator	Rajesh Acharya
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$4,000

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0.0% Enhancement **Subtotals 2, 3, & 7** \$0

Notes: No adjustment due to compliance history.

Culpability No 0.0% Enhancement **Subtotal 4** \$0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** \$0

Economic Benefit 0.0% Enhancement* **Subtotal 6** \$0

Total EB Amounts	\$1,875
Approx. Cost of Compliance	\$1,600

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$4,000

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$4,000

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$4,000

DEFERRAL 20.0% Reduction **Adjustment** -\$800

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

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY **\$3,200**

Screening Date 26-May-2010

Docket No. 2010-0907-MLM-E

PCW

Respondent City of Newton

Policy Revision 2 (September 2002)

Case ID No. 39780

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102328770

Media [Statute] Used Oil and Used Oil Filters

Enf. Coordinator Rajesh Acharya

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<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) 0%

>> 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

No adjustment due to compliance history.

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

Screening Date 26-May-2010 **Docket No.** 2010-0907-MLM-E **PCW**
Respondent City of Newton *Policy Revision 2 (September 2002)*
Case ID No. 39780 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN102328770
Media [Statute] Used Oil and Used Oil Filters
Enf. Coordinator Rajesh Acharya

Violation Number
Rule Cite(s) 30 Tex. Admin. Code § 324.7(3)(B) and Tex. Health & Safety Code § 371.024(b)(1) and 40 Code of Federal Regulations § 279.31(b)(2)
Violation Description Failed to register as a used oil collection center each odd numbered year no later than January 25 following the close of the year. Specifically, the registration expired on December 31, 2004.

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" value="0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="10%"/>

Matrix Notes:

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

Good Faith Efforts to Comply Reduction

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

Notes:

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 Newton
Case ID No. 39780
Reg. Ent. Reference No. RN102328770
Media Used Oil and Used Oil Filters
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	\$100	4-Mar-2010	5-Feb-2011	0.93	\$5	n/a	\$5
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to renew a used oil collection center registration. The Date required is the investigation date and 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]	\$200	25-Jan-2005	4-Mar-2010	6.02	\$60	\$200	\$260
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to renew a used oil filter collection center registration. The Date Required is the due date for renewing the registration and the Final Date is the investigation date.

Approx. Cost of Compliance

\$300

TOTAL

\$265

Screening Date 26-May-2010

Docket No. 2010-0907-MLM-E

PCW

Respondent City of Newton

Policy Revision 2 (September 2002)

Case ID No. 39780

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102328770

Media [Statute] Used Oil and Used Oil Filters

Enf. Coordinator Rajesh Acharya

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 328.24(a) and (c), and Tex. Health & Safety Code § 371.024(b)(1) and 40 Code of Federal Regulations § 279.31(b)(2)

Violation Description

Failed to register or renew the registration as a used oil filter processor and submit required reports. Specifically, the Respondent did not re-register the Facility as a used oil filter processor and did not submit reports showing the number of used oil filters collected. The registration expired on December 31, 2005.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 3 1607 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$750

Three single events are recommended (one for each two year period).

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/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 \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$255

Violation Final Penalty Total \$750

This violation Final Assessed Penalty (adjusted for limits) \$750

Economic Benefit Worksheet

Respondent City of Newton
Case ID No. 39780
Req. Ent. Reference No. RN102328770
Media Used Oil and Used Oil Filters
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	\$100	4-Mar-2010	5-Feb-2011	0.93	\$5	n/a	\$5
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to renew used oil filter processor registration. The Date required is the investigation date and 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]	\$200	25-Jan-2006	4-Mar-2010	5.02	\$50	\$200	\$250
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to renew a used oil filter processor registration. The Date Required is the due date for renewing the registration and the Final Date is the investigation date.

Approx. Cost of Compliance

\$300

TOTAL

\$255

Screening Date 26-May-2010

Docket No. 2010-0907-MLM-E

PCW

Respondent City of Newton

Policy Revision 2 (September 2002)

Case ID No. 39780

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102328770

Media [Statute] Used Oil and Used Oil Filters

Enf. Coordinator Rajesh Acharya

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 324.7(3)(E) and Tex. Health & Safety Code § 371.024(b)(2)

Violation Description Failed to report annually the amount of used oil collected by January 25 of each year. Specifically, the annual reports had not been submitted since 2001.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			X		

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 10 3408 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	X
single event	

mark only one with an x

Violation Base Penalty \$2,500

Ten annual events are recommended from the January 25, 2001 due date to the May 26, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/ 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 \$1,356

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent City of Newton
Case ID No. 39780
Req. Ent. Reference No. RN102328770
Media Used Oil and Used Oil Filters
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	\$100	4-Mar-2010	25-Jan-2011	0.90	\$4	n/a	\$4
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

Estimated cost to submit an annual report. The Date Required is the investigation date and the Final Date is the estimated 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]	\$900	25-Jan-2001	4-Mar-2010	10.03	\$451	\$900	\$1,351
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to submit an annual report. The Date Required is the date when the annual report was due. The Final Date is the investigation date.

Approx. Cost of Compliance

\$1,000

TOTAL

\$1,356



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	24-May-2010	Screening	26-May-2010	EPA Due	
	PCW	26-May-2010				

RESPONDENT/FACILITY INFORMATION			
Respondent	City of Newton		
Reg. Ent. Ref. No.	RN102328770		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39780	No. of Violations	3
Docket No.	2010-0907-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	Yes
Multi-Media	Used Oil and Used Oil Filters	Enf. Coordinator	Rajesh Acharya
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustments due to compliance history.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$143
Approx. Cost of Compliance	\$1,300

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$3,000**

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,000
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DEFERRAL	20.0% Reduction	Adjustment	-\$600
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$2,400
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Screening Date 26-May-2010

Docket No. 2010-0907-MLM-E

PCW

Respondent City of Newton

Policy Revision 2 (September 2002)

Case ID No. 39780

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102328770

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rajesh Acharya

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<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) 0%

>> 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

No adjustments due to compliance history.

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

Screening Date 26-May-2010

Docket No. 2010-0907-MLM-E

PCW

Respondent City of Newton

Policy Revision 2 (September 2002)

Case ID No. 39780

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102328770

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rajesh Acharya

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 330.219(a)

Violation Description

Failed to maintain the a copy of the municipal solid waste ("MSW") permit or registration at the Facility or at an alternate location approved by the Executive Director. Specifically, a copy of the registration was not available for inspection.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

83 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

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$25

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent City of Newton
Case ID No. 39780
Reg. Ent. Reference No. RN102328770
Media Municipal Solid Waste
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	\$500	4-Mar-2010	5-Mar-2011	1.00	\$25	n/a	\$25
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

Estimated cost to maintain the required records at the Facility. The Date Required is the investigation date and the Final Date is the expected 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

\$25

Screening Date 26-May-2010

Docket No. 2010-0907-MLM-E

PCW

Respondent City of Newton

Policy Revision 2 (September 2002)

Case ID No. 39780

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102328770

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rajesh Acharya

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 330.219(b)(2), 330.221(c) and 330.247

Violation Description Failed to train all employees in fire protection and health and safety procedures. Specifically, the operator had not received the required health and fire safety training.

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

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 83

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One quarterly event is recommended from the March 4, 2010 investigation date to the May 26, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/ 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 \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$15

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent City of Newton
Case ID No. 39780
Reg. Ent. Reference No. RN102328770
Media Municipal Solid Waste
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	\$300	4-Mar-2010	5-Mar-2011	1.00	\$15	n/a	\$15
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

Estimated cost to provide training in fire protection and health and safety procedures. The Date Required is the investigation date and the Final Date is the expected 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

\$300

TOTAL

\$15

Screening Date 26-May-2010

Docket No. 2010-0907-MLM-E

PCW

Respondent City of Newton

Policy Revision 2 (September 2002)

Case ID No. 39780

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102328770

Media [Statute] Municipal Solid Waste

Enf. Coordinator Rajesh Acharya

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 305.70(a) and 330.201(b)

Violation Description Failed to submit a permit modification application to incorporate the 2006 rule revisions to 30 Tex. Admin. Code Chapter 330. Specifically, the Respondent had not submitted a permit modification application to revise the Facility's Site Operating Plan by the due date of January 27, 2007.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		
100% of the rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 1215

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

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 \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$103

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent City of Newton
Case ID No. 39780
Reg. Ent. Reference No. RN102328770
Media Municipal Solid Waste
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	\$500	27-Jan-2007	5-Mar-2011	4.10	\$103	n/a	\$103
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit a complete permit modification application. Date Required is the due date for submitting the permit modification application and Final Date is the estimated 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

\$500

TOTAL

\$103

Compliance History Report

Customer/Respondent/Owner-Operator: CN600739247 City of Newton Classification: AVERAGE Rating: 0.42
Regulated Entity: RN102328770 NEWTON COUNTY TRANSFER STATION FACILITY Classification: HIGH Site Rating: 0.00

ID Number(s): MUNICIPAL SOLID WASTE DISPOSAL PERMIT 326
MUNICIPAL SOLID WASTE PROCESSING REGISTRATION 40106

Location: 720 JAMESTOWN RD, NEWTON, TX, 75966

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: May 12, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: May 12, 2005 to May 12, 2010

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

Name: John Shelton Phone: (512) 239-2563

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 08/01/2008 (670963)
2 04/28/2010 (780441)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- 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 NEWTON
RN102328770

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

AGREED ORDER DOCKET NO. 2010-0907-MLM-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 Newton ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 371, and TEX. WATER CODE ch. 7. 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 transfer station and used oil collection center located at 720 Jamestown Road in Newton, Newton County, Texas (the "Facility").
2. The Facility involves or involved the management of municipal solid waste ("MSW") and used oil as defined in TEX. HEALTH & SAFETY CODE chs. 361 and 371, respectively.
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 3, 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 Seven Thousand Dollars (\$7,000) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). One Thousand Four Hundred Dollars (\$1,400) 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. Five Thousand Six Hundred Dollars (\$5,600) 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 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.
 10. 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.
 11. 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 maintain a copy of the MSW permit or registration at the Facility or at an alternate location approved by the Executive Director, in violation of 30 TEX. ADMIN. CODE § 330.219(a), as documented during an investigation conducted on March 4, 2010. Specifically, a copy of the registration was not available for inspection.
2. Failed to train all employees in fire protection and health and safety procedures, in violation of 30 TEX. ADMIN. CODE §§ 330.219(b)(2), 330.221(c) and 330.247, as documented during an investigation conducted on March 4, 2010. Specifically, the operator had not received the required fire safety training.
3. Failed to submit a permit modification application to incorporate the 2006 rule revisions to 30 TEX. ADMIN. CODE Chapter 330, in violation of 30 TEX. ADMIN. CODE §§ 305.70(a) and 330.201(b), as documented during an investigation conducted on March 4, 2010. Specifically, the Respondent had not submitted a permit modification application to revise the Facility's Site Operating Plan ("SOP") by the due date of January 27, 2007.
4. Failed to register as a used oil collection center each odd numbered year no later than January 25 following the close of the year, in violation of 30 TEX. ADMIN. CODE § 324.7(3)(B) and TEX. HEALTH & SAFETY CODE § 371.024(b)(1) and 40 CODE OF FEDERAL REGULATIONS §

279.31(b)(2), as documented during an investigation conducted on March 4, 2010. Specifically, the registration expired on December 31, 2004.

5. Failed to register or to renew the registration form as used oil filter processor and submit required reports, in violation of 30 TEX. ADMIN. CODE § 328.24(a) and (c), and TEX. HEALTH & SAFETY CODE § 371.024(b)(1) and 40 CODE OF FEDERAL REGULATIONS § 279.31(b)(2), as documented during an investigation conducted on March 4, 2010. Specifically, the Respondent did not re-register the Facility as a used oil filter processor and did not submit reports showing the number of used oil filters collected. The registration expired on December 31, 2005.
6. Failed to report annually the amount of used oil collected by January 25 of each year, in violation of 30 TEX. ADMIN. CODE § 324.7(3)(E) and TEX. HEALTH & SAFETY CODE § 371.024(b)(2), as documented by an investigation conducted on March 4, 2010. Specifically, the annual reports had not been submitted since 2001.

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 Newton, Docket No. 2010-0907-MLM-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, Five Thousand Six Hundred Dollars (\$5,600) 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 agreements.
3. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, cease accepting used oil and used oil filters until properly registered, in accordance with 30 TEX. ADMIN. CODE §§ 324.7 and 328.24;

- b. Within 30 days after the effective date of this Agreed Order:
- i. Submit a properly completed used oil and used oil filter registration form to:

Used Oil and Recycling Program, Registration and Reporting Section,
MC129
Texas Commission on Environmental Quality
P.O. Box 13087, Austin, Texas 78711-3087
 - ii. Develop and implement a plan to submit annual reports for the used oil and used oil filter collection center by January 25 of each year, in accordance with 30 TEX. ADMIN. CODE §§ 324.7(3)(E) and 328.24(c)(1);
 - iii. Begin maintaining all required records including a copy of the MSW registration at the Facility or at an alternate location approved by the Executive Director, in accordance with 30 TEX. ADMIN. CODE § 330.219(a); and
- c. With 45 days after the effective date of this Agreed Order:
- i. Submit an administratively complete permit modification application to update the Facility's SOP, in accordance with 30 TEX. ADMIN. CODE §§ 305.70(a) and 330.201(b) to:

MSW Permits Section, MC 124
Waste Permits Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - ii. Ensure that all employees receive training in fire protection and health and safety procedures, in accordance with 30 TEX. ADMIN. CODE §§ 330.221(c) and 330.247.
- d. Within 60 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a. through 3.c.ii. 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 fines and imprisonment for knowing violations."

The certification shall be submitted 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:

Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.

City of Newton
DOCKET NO. 2010-0907-MLM-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. ...
For the Executive Director

3/15/2011
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.

Donald H. Meek
Signature

1/15/11
Date

DONALD H. Meek
Name (Printed or typed)
Authorized Representative of
City of Newton

City Administrator
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: 2010-0907-MLM-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Newton
Penalty Amount:	Five Thousand Six Hundred Dollars (\$5,600)
SEP Offset Amount:	Five Thousand Six Hundred Dollars (\$5,600)
Type of SEP:	Custom
Location of SEP:	Newton County; Sabine and Neches River Basins

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the Administrative Penalty Amount assessed in this Agreed Order for Respondent to perform a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

Respondent shall perform cleanup of an illegal trash dump along Meek Street between MLK Street and State Highway 87 and also along Sylvester Street northwest of MLK Street (the “project”) in Newton County, Texas. The project will utilize city crews and heavy equipment to collect and haul away discarded miscellaneous household items such as furniture, appliances, tires, and trash from the two sites. The collected waste will be transported to the Dewey Solid Waste Landfill, in Deweyville, Newton County, Texas.

Respondent shall:

- advertise for the cleanup and will include the required enforcement statement described in Section 6 below in the advertisement;
- provide supervision to ensure proper and complete removal of debris; and
- provide documentation of proper disposal or recycling of all wastes collected from the cleanup.

Respondent shall perform the project in accordance with all federal, state, and local environmental laws and regulations. Respondent shall spend the SEP Offset Amount only for the direct cost of implementing the project. No portion of the SEP Offset Amount shall be spent on administrative costs.

Respondent’s signature affixed to this Agreed Order certifies that there is no prior commitment to do the project and that the project is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

The project will help reduce the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects. The project will remove solid waste that has been disposed of and is considered detrimental to the environment.

C. Minimum Expenditure

Respondent shall spend at least the SEP Offset Amount to complete the project and shall comply with all other provisions of this Attachment A. Respondent understands that it may cost more than the SEP Offset Amount to complete the project.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent shall begin implementation of the project, and shall complete the project in its entirety within 365 days after the effective date of this Agreed Order.

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, Respondent shall submit a report to the TCEQ detailing the progress made on the project during the previous 60-day period and setting forth a schedule for achieving completion of the project within the time-frame required in Section 2, above. Thereafter, Respondent shall submit progress reports to the TCEQ in the following increments and containing detailed information as set forth in the table below:

Table 1: Required Information

Days from Effective Order Date	Required Information
90	Actions taken during the previous 60-day period to implement the project
180	Actions taken during the previous 90-day period to implement the project
270	Actions taken during the previous 90-day period to implement the project
365	Notice of project completion

B. Final Report

Within 60 days after completion of the project, and not later than 425 days after the effective date of the Agreed Order, Respondent shall submit a Final Report to the TCEQ which includes:

- An itemized list of expenditures and total of costs incurred to complete the project;
- Copies of invoices, paid receipts, cleared checks or payment records corresponding to the itemized list required in paragraph 3.B.1., above;
- Copies of proof of advertisement of the cleanup event (the advertisement must include a statement that the SEP was performed as a result of a TCEQ enforcement action);
- Copies of time sheets for employees who worked overtime on the project. Time sheets must be certified by payroll supervisor and include first and last name of the employee, the rate of pay per hour, and the total number of hours worked on the project;
- List of items collected from cleanup site(s);
- Copies of proof of advertisement of the cleanup event (the advertisement must include a

- statement that the SEP was performed as a result of a TCEQ enforcement action) and proof of publication of invitation for (and selection of competitive bids for the project, if applicable);
- Photographs of the project in progress showing items collected and after the project is completed;
 - Map showing exact location(s) of cleanup(s) clearly marked. The map must be of sufficient detail to allow TCEQ staff to verify the location of the completed project;
 - Manifests sufficient to show proof of proper disposal and/or recycling of the collected items;
 - A certified/notarized statement of quantifiable environmental benefit. Respondent must quantify the environmental benefit of the project; and
 - Any additional information and supporting documentation to demonstrate completion of the project in compliance with this SEP agreement.

C. Address

Respondent shall submit all reports and supporting documentation required by this SEP agreement and any requested additional information to the following address:

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

3. Additional Information and Access

Respondent shall provide any additional information as required by TCEQ staff and shall allow access to all records related to the receipt and expenditure of SEP Offset Amount. Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP Offset Amount. This provision shall survive the termination of this Agreed Order.

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 Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to complete the project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall 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 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

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program. Similarly, 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 Respondent under any other orders negotiated with the TCEQ or any other agency of the state or federal government.