

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO. 2009-1297-MWD-E RN101920916 CASE NO. 38112**  
**RESPONDENT NAME: CITY OF NEW BOSTON**

ORDER TYPE:		
<input checked="" type="checkbox"/> AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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:** 2,500 feet southeast of the intersection of State highway 8 and Farm-to-Market Road 1840, approximately 1.75 miles southeast of New Boston, Bowie County

**TYPE OF OPERATION:** wastewater treatment facility

**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 action 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 March 7, 2011. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Stephanie J. Frazee, Litigation Division, MC 175, (512) 239-3400  
 Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ Enforcement Coordinator:** Heather Brister, Water Enforcement Section, MC R-09 (254) 761-3034

**TCEQ Regional Contact:** Noel Luper, Tyler Regional Office, MC R-05, (903) 535-5174

**Respondent:** Johnny L. Branson, Mayor, City of New Boston, P.O. Box 5, New Boston, Texas 75570

**Respondent's Attorney:** J. Michael Brock, Attorney at Law, P.O. Box 785, New Boston, Texas 75570

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint:</b> N/A</p> <p><b>Date of Investigation:</b> May 5, 2009</p> <p><b>Date of NOE:</b> July 17, 2009</p> <p><b>Background Facts:</b> The EDPRP was filed on April 28, 2010. Respondent filed an answer and the case was referred to SOAH. The Agreed Order was signed on January 11, 2011.</p> <p><b>Current Compliance Status:</b> No outstanding technical requirements.</p> <p><b>MWD:</b></p> <ol style="list-style-type: none"> <li>Failed to obtain a Multi-Sector General Permit ("MSGP") for industrial storm water [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c)].</li> <li>Failed to properly operate and maintain all systems of treatment and control (and related appurtenances) installed or used to achieve compliance with permit conditions [30 TEX. ADMIN. CODE § 305.125(5) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010482001, Operational Requirements No. 1].</li> <li>Failed to prevent the unauthorized discharges of wastewater into or adjacent to water in the state [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(4) and (5), and TPDES Permit No. WQ0010482001, Permit Conditions No. 2(g)].</li> </ol>	<p><b>Total Assessed:</b> \$28,120</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid/Due to General Revenue:</b> \$785/\$27,335</p> <p>Respondent paid \$785 of the administrative penalty. The remaining amount of \$27,335 shall be paid in 35 monthly payments of \$781 each.</p> <p><b>Compliance History Classifications:</b>  <i>Person/CN</i> – Average  <i>Site/RN</i> – Average</p> <p><b>Major Source:</b>  PCW 1 - <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No  PCW 2 - <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that Respondent performed the following corrective actions:</p> <ol style="list-style-type: none"> <li>On September 23, 2009, obtained coverage under MSGP No. TXR05Y810 (Violation No. 1);</li> <li>By August 3, 2010, properly decommissioned the sand media and flooring of the sludge drying beds and began using a centrifuge and concrete bottomed sludge drying beds (Violation No. 2);</li> <li>By August 3, 2010, removed the automatic bar screen from service and directed the sewage flow to a manually cleaned bar screen that is monitored daily and cleaned and raked several times a day (Violation No. 2);</li> <li>By August 3, 2010, extended the scum box cleanout by one foot of additional height to prevent overflow (Violation No. 2); and</li> <li>Made repairs to the Sunset Street lift station after each unauthorized discharge (Violation No. 3).</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	20-Jul-2009	<b>Screening</b>	28-Jul-2009	<b>EPA Due</b>	
	<b>PCW</b>	2-Mar-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	City of New Boston
<b>Reg. Ent. Ref. No.</b>	RN101920916
<b>Facility/Site Region</b>	5-Tyler
<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	38112	<b>No. of Violations</b>	2
<b>Docket No.</b>	2009-1297-MWD-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Heather Brister
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$10,000
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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.

<b>Compliance History</b>	108.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$10,800
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Notes: The Respondent has one findings order, four NOVs for unrelated violations, three NOVs for same or similar violations, and has 12 months of self-reported effluent violations.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$382  
 Approx. Cost of Compliance \$7,739  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$20,800
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$20,800
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$20,800
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	\$20,800
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**Screening Date** 28-Jul-2009

**Docket No.** 2009-1297-MWD-E

**PCW**

**Respondent** City of New Boston

Policy Revision 2 (September 2002)

**Case ID No.** 38112

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN101920916

**Media [Statute]** Water Quality

**Enf. Coordinator** Heather Brister

**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> )	15	75%
	Other written NOVs	4	8%
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	1	25%
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)** 108%

>> **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 one findings order, four NOVs for unrelated violations, three NOVs for same or similar violations, and has 12 months of self-reported effluent violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 108%

**Screening Date** 28-Jul-2009 **Docket No.** 2009-1297-MWD-E **PCW**  
**Respondent** City of New Boston *Policy Revision 2 (September 2002)*  
**Case ID No.** 38112 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101920916  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Heather Brister

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**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	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>

**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 checked="" type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

**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	<input checked="" type="text" value="x"/>	(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 New Boston  
**Case ID No.** 38112  
**Reg. Ent. Reference No.** RN101920916  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$5,000	5-May-2009	31-Mar-2010	0.90	\$15	\$301	\$316
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	5-May-2009	31-Mar-2010	0.90	\$5	n/a	\$5
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

This is the cost of a multi-sector general permit for storm water and the estimated cost to have an engineer prepare a Storm Water Pollution Prevention Plan and the permit application. The date required is the investigation date and the final date is the anticipated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,100

**TOTAL**

\$321

**Screening Date** 28-Jul-2009 **Docket No.** 2009-1297-MWD-E **PCW**  
**Respondent** City of New Boston *Policy Revision 2 (September 2002)*  
**Case ID No.** 38112 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101920916  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Heather Brister

**Violation Number** 2

**Rule Cite(s)** 30 Tex. Admin. Code § 305.125(5) and TPDES Permit No. WQ0010482001, Operational Requirements No. 1

**Violation Description**

Failed to properly operate and maintain all systems of treatment and control (and related appurtenances) installed or used to achieve compliance with permit conditions, as documented during the May 5, 2009 investigation. Specifically, Clarifier Nos. 1 and 2 had worn down scum rake gaskets; the automatic bar screen had been removed and unscreened sewage was flowing directly into the aeration basin; sewage screenings were scattered on the ground surrounding the scum box cleanout for Clarifier No. 3; and the sand media and flooring in the sludge drying beds needed to be replaced.

**Base Penalty** \$10,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				25%
	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 protective levels as a result of this violation.

**Adjustment** \$7,500

\$2,500

**Violation Events**

Number of Violation Events 1 84 Number of violation days

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

**Violation Base Penalty** \$2,500

One quarterly event is recommended from the investigation date (May 5, 2009) to the screening date (July 28, 2009).

**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** \$61

**Violation Final Penalty Total** \$5,200

**This violation Final Assessed Penalty (adjusted for limits)** \$5,200

## Economic Benefit Worksheet

**Respondent** City of New Boston  
**Case ID No.** 38112  
**Reg. Ent. Reference No.** RN101920916  
**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)	\$1,639	5-May-2009	10-Jun-2009	0.10	\$1	\$11	\$11
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	5-May-2009	30-Apr-2010	0.99	\$49	n/a	\$49

Notes for DELAYED costs

These are the costs the City incurred to install skimmer wipers on Clarifier Nos. 1 and 2 and install a two foot riser on the scum box for Clarifier No. 3 and the estimated costs to replace the manual bar screen and repair or replace the sludge drying beds. The date required is the investigation date and the final dates are the date by which the repairs to the clarifiers were completed and the anticipated date when the bar screen and sludge drying beds will be repaired and/or replaced.

### 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

\$2,639

**TOTAL**

\$61



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	20-Jul-2009	<b>Screening</b>	28-Jul-2009	<b>EPA Due</b>	
	<b>PCW</b>	2-Mar-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	City of New Boston		
<b>Reg. Ent. Ref. No.</b>	RN101920916		
<b>Facility/Site Region</b>	5-Tyler	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	38112	<b>No. of Violations</b>	1
<b>Docket No.</b>	2009-1297-MWD-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Heather Brister
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$</b>	<b>Limit Minimum</b>	\$0	<b>Maximum</b>
			\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$4,000
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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.

<b>Compliance History</b>	108.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$4,320
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Notes: The Respondent has one findings order, four NOVs for unrelated violations, three NOVs for same or similar violations, and has 12 months of self-reported effluent violations.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$1,000
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$2,499  
 Approx. Cost of Compliance \$30,664  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$7,320
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: [Empty box]

<b>Final Penalty Amount</b>	\$7,320
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$7,320
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	\$7,320
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**Screening Date** 28-Jul-2009

**Docket No.** 2009-1297-MWD-E

**PCW**

**Respondent** City of New Boston

*Policy Revision 2 (September 2002)*

**Case ID No.** 38112

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101920916

**Media [Statute]** Water Quality

**Enf. Coordinator** Heather Brister

### 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)	15	75%
	Other written NOVs	4	8%
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	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

*Please Enter Yes or No*

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 108%

**>> 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 one findings order, four NOVs for unrelated violations, three NOVs for same or similar violations, and has 12 months of self-reported effluent violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 108%

**Screening Date** 28-Jul-2009 **Docket No.** 2009-1297-MWD-E **PCW**  
**Respondent** City of New Boston *Policy Revision 2 (September 2002)*  
**Case ID No.** 38112 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101920916  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Heather Brister

**Violation Number**   
**Rule Cite(s)**   
**Violation Description**   
**Base Penalty**

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

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

**>> Programmatic Matrix**

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

**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

	Before NOV	NOV to EDPRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input checked="" type="checkbox"/>	<input type="text"/>
N/A	<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 New Boston  
**Case ID No.** 38112  
**Req. Ent. Reference No.** RN101920916  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$30,164	9-Apr-2008	10-Jun-2009	1.17	\$118	\$2,353	\$2,470
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	\$500	9-Apr-2008	10-Jun-2009	1.17	\$29	n/a	\$29
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: This is the cost the City incurred to repair the Sunset lift station and the estimated costs to remove and properly dispose of solids. The date required is the date the first unauthorized discharge occurred and the final date is the date the repairs were completed.

### 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

\$30,664

**TOTAL**

\$2,499

## Compliance History Report

Customer/Respondent/Owner-Operator: CN600686802 City of New Boston Classification: AVERAGE Rating: 2.03  
 Regulated Entity: RN101920916 CITY OF NEW BOSTON WWTP Classification: AVERAGE Site Rating: 2.03  
 ID Number(s): WASTEWATER PERMIT WQ0010482001  
 WASTEWATER PERMIT TPDES0026018  
 WASTEWATER PERMIT TX0026018  
 WASTEWATER LICENSING LICENSE WQ0010482001

Location: LOCATED 2,500 FT SE OF THE INT OF SH 8 AND FM RD 1840  
 AND APPR. 1.75 MI SE OF THE CITY OF NEW BOSTON, BOWIE CTY, TX,  
 TYLER

TCEQ Region: REGION 05 -  
 Date Compliance History Prepared: September 4, 2009  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: September 4, 2004 to September 4, 2009  
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Pamela Campbell Phone: (512) 239 - 4493

### 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: 9/1/2008 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.  
**Effective Date: 01/26/2007 ADMINORDER 2004-0525-MWD-E**  
 Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Rqmt Prov: Effluent Limits PERMIT  
 Description: Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.
- 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  | 09/17/2004 | (354624) |
| 2  | 09/27/2004 | (293361) |
| 3  | 10/18/2004 | (354625) |
| 4  | 11/16/2004 | (383270) |
| 5  | 12/06/2004 | (343226) |
| 6  | 12/21/2004 | (383271) |
| 7  | 01/24/2005 | (383272) |
| 8  | 02/22/2005 | (421094) |
| 9  | 03/17/2005 | (383269) |
| 10 | 04/22/2005 | (421095) |
| 11 | 05/16/2005 | (421096) |
| 12 | 06/16/2005 | (421097) |
| 13 | 09/16/2005 | (442075) |
| 14 | 10/14/2005 | (470931) |
| 15 | 10/19/2005 | (442073) |
| 16 | 10/19/2005 | (442074) |
| 17 | 10/19/2005 | (442076) |
| 18 | 11/18/2005 | (470932) |
| 19 | 12/27/2005 | (470933) |
| 20 | 02/21/2006 | (470928) |
| 21 | 03/21/2006 | (470929) |
| 22 | 04/06/2006 | (456366) |
| 23 | 04/17/2006 | (470930) |
| 24 | 05/15/2006 | (499828) |
| 25 | 06/19/2006 | (499829) |
| 26 | 07/21/2006 | (521915) |
| 27 | 08/14/2006 | (521916) |
| 28 | 09/20/2006 | (521917) |
| 29 | 10/04/2006 | (530989) |
| 30 | 10/16/2006 | (546569) |
| 31 | 11/20/2006 | (546570) |
| 32 | 12/18/2006 | (546571) |
| 33 | 02/16/2007 | (533334) |
| 34 | 02/22/2007 | (578737) |
| 35 | 03/19/2007 | (578738) |
| 36 | 03/30/2007 | (578743) |
| 37 | 04/13/2007 | (578739) |
| 38 | 05/18/2007 | (578740) |
| 39 | 06/23/2007 | (578741) |

40 07/10/2007 (593227)  
 41 07/18/2007 (578742)  
 42 08/20/2007 (602556)  
 43 09/19/2007 (620801)  
 44 10/16/2007 (620802)  
 45 11/26/2007 (620803)  
 46 12/17/2007 (673011)  
 47 01/28/2008 (673012)  
 48 01/30/2008 (673013)  
 49 02/21/2008 (673009)  
 50 03/17/2008 (673010)  
 51 04/11/2008 (691079)  
 52 04/11/2008 (691082)  
 53 05/23/2008 (691080)  
 54 06/23/2008 (691081)  
 55 07/25/2008 (615698)  
 56 08/20/2008 (711962)  
 57 09/04/2008 (701880)  
 58 09/26/2008 (711963)  
 59 10/20/2008 (728364)  
 60 12/02/2008 (728365)  
 61 12/18/2008 (728366)  
 62 02/02/2009 (751460)  
 63 02/06/2009 (725447)  
 64 02/24/2009 (751458)  
 65 02/25/2009 (758979)  
 66 03/23/2009 (751459)  
 67 04/30/2009 (769191)  
 68 05/22/2009 (769192)  
 69 07/15/2009 (759431)

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

**Date: 12/07/2004 (343226)**  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(4)  
 30 TAC Chapter 305, SubChapter F 305.125(5)  
 Description: Failure to prevent unauthorized discharges.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(9)  
 Description: Failure to provide Media Notification for unauthorized discharge.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to comply with permitted effluent limits.

**Date: 05/31/2005 (421097) CN600686802**  
 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

**Date: 06/30/2005 (442073) CN600686802**  
 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

**Date: 07/31/2005 (442074) CN600686802**  
 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

**Date: 09/30/2005 (470931) CN600686802**  
 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

**Date: 10/31/2005 (470932) CN600686802**  
 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

**Date: 10/04/2006 (530989)**  
 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

**Date: 11/30/2006 (546571) CN600686802**  
 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

**Date: 12/31/2006 (578743) CN600686802**  
 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

**Date: 02/20/2007 (533334) CN600686802**  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 317 317.6(b)(1)  
 30 TAC Chapter 317 317.6(b)(1)(A)  
 30 TAC Chapter 317 317.6(b)(1)(B)  
 30 TAC Chapter 317 317.6(b)(1)(C)  
 30 TAC Chapter 317 317.6(b)(1)(D)  
 30 TAC Chapter 317 317.6(b)(1)(E)  
 30 TAC Chapter 317 317.6(b)(1)(F)  
 30 TAC Chapter 317 317.6(b)(1)(G)  
 Description: Failure to maintain chlorine room exhaust fan.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)  
 30 TAC Chapter 317 317.4(g)(4)(B)  
 Description: Failure to maintain aeration basin rotors.

**Date: 04/30/2007 (578740) CN600686802**  
 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

**Date: 05/31/2007 (578741) CN600686802**  
 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

**Date: 07/10/2007 (593227) CN600686802**  
 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

**Date: 07/31/2007 (602556) CN600686802**  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter

**Date: 08/31/2007 (620801) CN600686802**  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter

**Date: 01/31/2008 (673009) CN600686802**  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter

**Date: 07/25/2008 (615698) CN600686802**  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 317 317.6(b)(1)  
 30 TAC Chapter 317 317.6(b)(1)(A)  
 30 TAC Chapter 317 317.6(b)(1)(B)  
 30 TAC Chapter 317 317.6(b)(1)(C)  
 30 TAC Chapter 317 317.6(b)(1)(D)  
 30 TAC Chapter 317 317.6(b)(1)(E)  
 30 TAC Chapter 317 317.6(b)(1)(F)  
 30 TAC Chapter 317 317.6(b)(1)(G)  
 Description: Failure to maintain chlorine room exhaust fan.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)  
 30 TAC Chapter 317 317.4(g)(4)(B)  
 Description: Failure to maintain aeration basin rotors.  
 Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 317 317.4(a)(8)  
 30 TAC Chapter 317 317.7(i)  
 Description: Failure to have the appropriate backflow prevention assembly installed on the  
 potable water line at the WWTP as specified in TAC §317.4(a)(8).  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)  
 30 TAC Chapter 317 317.4(b)(1)  
 Description: Failure to maintain the bar screen as specified in TAC §305.125(a)(5).  
**Date: 02/13/2009 (725447) CN600686802**  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 317 317.4(a)(8)  
 30 TAC Chapter 317 317.7(i)  
 Description: Failure to have the appropriate backflow prevention assembly installed on the  
 potable water line at the WWTP as specified in TAC §317.4(a)(8).  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)  
 30 TAC Chapter 317 317.4(b)(1)  
 Description: Failure to maintain the bar screen as specified in TAC §305.125(a)(5).  
 Self Report? NO Classification: Minor  
 Citation: TPDES Permit No. WQ0010482001 PERMIT  
 TWC Chapter 26 26.121  
 Description: Failure to prevent an unauthorized discharge and ensure that the systems of collection are properly operated and maintained.  
**Date: 02/25/2009 (758979) CN600686802**  
 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  
 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

- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.  
N/A
- J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF NEW BOSTON;  
RN101920916**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER**

**DOCKET NO. 2009-1297-MWD-E**

**I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding City of New Boston ("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 J. Michael Brock, Attorney at Law, appear before the Commission and together stipulate that:

1. Respondent owns and operates a wastewater treatment facility located 2,500 feet southeast of the intersection of State Highway 8 and Farm-to-Market Road 1840, approximately 1.75 miles southeast of New Boston in Bowie County, Texas (the "Facility"). 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.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of twenty eight thousand one hundred twenty dollars (\$28,120.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid seven hundred eighty-five dollars (\$785.00) of the administrative penalty. The remaining amount of twenty-seven thousand three hundred thirty-five dollars (\$27,335.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of seven hundred eighty-one dollars (\$781.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent

fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

6. 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.
7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.
8. The Executive Director recognizes that Respondent implemented the following corrective measures at the Facility:
  - a. On September 23, 2009, Respondent obtained coverage under Multi-Sector General Permit ("MSGP") No. TXR05Y810 (Allegation No. 1.a.);
  - b. By August 3, 2010, Respondent properly decommissioned the sand media and flooring of the sludge drying beds and began using a centrifuge and concrete bottomed sludge drying beds (Allegation No. 1.b.).
  - c. By August 3, 2010, Respondent removed the automatic bar screen from service and directed the sewage flow to a manually cleaned bar screen that is monitored daily and cleaned and raked several times a day (Allegation No. 1.b.);
  - d. By August 3, 2010, Respondent extended the scum box cleanout by one foot of additional height to prevent overflow (Allegation No. 1.b.); and
  - e. Respondent made repairs to the Sunset Street lift station after each unauthorized discharge (Allegation No. 1.c.).
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 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

1. During an investigation conducted on May 5, 2009, a TCEQ Tyler Regional Office investigator documented that Respondent violated:
  - a. 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 C.F.R. § 122.26(c), by failing to obtain an MSGP for industrial storm water. Specifically, in accordance with the MSGP, Part V, Section T, wastewater treatment facilities with design flows of 1.0 million gallons per day ("MGD") or more are required to obtain coverage under this permit. Respondent's permitted daily average flow is 1.7 MGD;
  - b. 30 TEX. ADMIN. CODE § 305.125(5) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010482001, Operational Requirements No. 1, by failing to properly operate and maintain all systems of treatment and control (and related appurtenances) installed or used to achieve compliance with permit conditions. Specifically, Clarifier Nos. 1 and 2 had worn down scum rake gaskets; the automatic bar screen had been removed and unscreened sewage was flowing directly into the aeration basin; sewage screenings were scattered on the ground surrounding the scum box cleanout for Clarifier No. 3; and the sand media and flooring in the sludge drying beds needed to be replaced; and
  - c. TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(4) and (5), and TPDES Permit No. WQ0010482001, Permit Conditions No. 2(g) by failing to prevent the unauthorized discharges of wastewater from the Sunset Street lift station into or adjacent to water in the state. Specifically, on April 9, 2008, approximately 20,000 gallons of untreated wastewater was discharged due to inflow from a five inch rainfall event; on December 29, 2008, approximately 50,000 gallons of untreated wastewater was discharged due to a gasket blowout; on March 11, 2009, a breaker in the electrical panel caught fire causing approximately 50,000 gallons of untreated wastewater to be discharged; and on May 4, 2009, approximately 5,000 gallons of untreated wastewater was discharged due to a melted wire and bad pump.
2. Respondent received notice of the violations on or about July 22, 2009.

## III. DENIALS

Respondent generally denies each Allegation in Section II.

## IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and 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 considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: City of New Boston, Docket No. 2009-1297-MWD-E" to:

Financial Administration Division, Revenues Section  
Texas Commission on Environmental Quality  
Attention: Cashier's Office, MC 214  
P.O. Box 13088

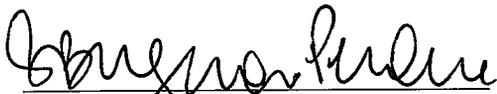
2. All relief not expressly granted in this Agreed Order is denied.
3. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have 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.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by 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.
6. 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.
7. 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.

8. Pursuant to 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.

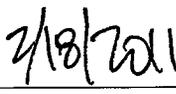
SIGNATURE PAGE.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission



For the Executive Director



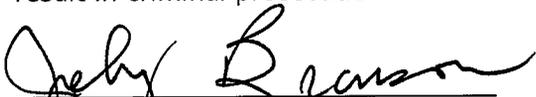
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of City of New Boston, 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.

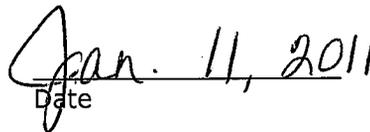
I also understand that failure to comply with the Ordering Provisions in this order and/or failure to timely pay the penalty amount may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature: Johnny L. Branson, Mayor  
City of New Boston



\_\_\_\_\_  
Date