

**Executive Summary – Enforcement Matter – Case No. 40916**  
**J-W Operating Company**  
**RN100791417**  
**Docket No. 2011-0039-AIR-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

**Media:**

AIR

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Sweetwater Creek Gas Plant, on the north side of County Road 4522, approximately 2.5 miles east of the intersection of Farm-to-Market Road 2264 and County Road 4522, Wise County

**Type of Operation:**

Gas plant

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** June 10, 2011

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$212,500

**Amount Deferred for Expedited Settlement:** \$0

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$212,500

Name of SEP: University of Texas at Arlington - Texas Air Monitoring Network

**Compliance History Classifications:**

Person/CN - Average

Site/RN - High

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 40916  
J-W Operating Company  
RN100791417  
Docket No. 2011-0039-AIR-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** December 28, 2010 through December 29, 2010

**Date(s) of NOE(s):** December 29, 2010

***Violation Information***

Failed to comply with the annual allowable emissions rate [30 TEX. ADMIN. CODE §§ 106.352 and 106.512, TEX. HEALTH & SAFETY CODE § 382.085(b) and Permit By Rule Registration No. 74342].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Executive Director recognizes that the Respondent closed the vent on the natural gas liquid (“NGL”) tank vapor return line on December 27, 2010, re-directing the vapors back to the plant inlet, and on December 29, 2010, the Respondent permanently disconnected the piping from the NGL storage tank to the process vent.

**Technical Requirements:**

The Order will require the Respondent to implement and complete a Supplemental Environmental Project (“SEP”). (See SEP Attachment A)

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** John Muennink, Enforcement Division, Enforcement Team 5, MC R-12, (713) 422-8970; Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495

**TCEQ SEP Coordinator:** Phillip Hampsten, SEP Coordinator, Enforcement Division, MC 219, (512) 239-6732

**Respondent:** C.D. McDaniels, Executive Vice President, J-W Operating Company, P.O. Box 226406, Dallas, Texas 75222-6106

Travis Ashby, Director of Regulatory Affairs, J-W Operating Company, P.O. Box 226406, Dallas, Texas 75222-6106

**Respondent's Attorney:** Celina Romero, Duggins Wren Mann & Romero, LLP, 300 West 6<sup>th</sup> Street, Suite 1500, Austin, Texas 78767

**Attachment A**  
**Docket Number: 2011-0039-AIR-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>J-W Operating Company</b>
<b>Penalty Amount:</b>	<b>Two Hundred Twelve Thousand Five Hundred Dollars (\$212,500)</b>
<b>SEP Offset Amount:</b>	<b>Two Hundred Twelve Thousand Five Hundred Dollars (\$212,500)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>University of Texas at Arlington</b>
<b>Project Name:</b>	<b>Texas Air Monitoring Network SEP</b>
<b>Location of SEP:</b>	<b>All Counties Statewide</b>

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

**1. Project Description**

a. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the University of Texas at Arlington for the *Texas Air Monitoring Network SEP* to be used as set forth in an agreement between the Third-Party Recipient and the TCEQ (the “Project”). Specifically, SEP funds will be used to construct, operate, maintain, and potentially expand a network of continuous ambient monitoring stations (“CAMS”) that monitor both air toxics and ozone precursors. Each CAMS will feature an automated gas-chromatograph (“Auto-GC”) which shall monitor ambient air for chemical compounds that could potentially affect human health and welfare and ozone formation. The current target analyte list for each Auto GC includes approximately 48 parameters. An oxides of nitrogen monitor, sulfur dioxide monitor and meteorological data instruments may also be installed at sites in the future upon approval from TCEQ.

Specifically, SEP Funds shall be used for site preparation, equipment purchase, operation and maintenance of an air monitoring network in the state of Texas in order to provide information on data quality and trends to the public, TCEQ, and industry representatives. Contingent upon funding and priorities, each of the CAMS locations shall measure air quality for a variety of parameters. Hourly measurements shall be

J-W Operating Company  
Agreed Order - Attachment A

reported for approximately 48 parameters that participate in the formation of ground level ozone and several of which are designated by the EPA as Hazardous Air Pollutants (“HAPs”). The speciated measurements shall be made using an Auto-GC. In the future at TCEQ’s direction, both 5-minute and hourly averaged measurements of oxides of nitrogen (“NO<sub>x</sub>”), nitric oxide (“NO”), and nitrogen dioxide (“NO<sub>2</sub>”), ozone (“O<sub>3</sub>”), sulfur dioxide (“SO<sub>2</sub>”) and meteorological parameters (i.e., wind speed, wind direction, horizontal wind standard deviation, wind gust, net radiation, and outside air temperature) may be measured and reported. Other parameters may be considered dependent upon funding. The data from this program shall be collected, validated and quality assured using methodologies consistent with TCEQ standards. Available data from each CAMS shall be uploaded every 15 minutes via a web based portal directly to TCEQ’s air quality information database which TCEQ may make available to the public via the TCEQ public web site.

The SEP shall be conducted under a TCEQ-approved Quality Assurance Project Plan containing all applicable EPA QA-R5 elements. Analysis of all data collected from these sites will comply with standard operating procedures for the analysis and measurement of air toxics and ozone precursors in ambient air. The laboratory data generated by this project will be from a TCEQ accredited laboratory in compliance with state laws and rules regarding use of certified or accredited testing laboratories. For example, data submitted must comply with 30 Texas Administrative Code, Chapter 25, Subchapter A, relating to Environmental Testing Laboratory Accreditation and Certification, as amended, where applicable. The data collected using SEP Funds will be validated and sent to TCEQ’s LEADS system and EPA’s AQS. All costs associated with the collection, transfer, and formatting of this data to be compatible with the LEADS system and the AQS System may utilize SEP funds.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

Respondent’s signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

b. Environmental Benefit

This air monitoring project will provide data to help prevent pollution and reduce the amount of pollutants reaching the environment. Data from these monitors may be used to evaluate the effectiveness of current emission control strategies, track ambient concentration trends for key pollutants of interest, evaluate episodic emission events, conduct source attribution studies, support enforcement actions and assess potential community exposure to toxic air contaminants.

This SEP will collect data sets that can be used to evaluate and track air pollution emission events as they occur, and to assess potential ambient community exposure to a limited number of HAPs. Data from the monitors will be used with data from other monitors to provide critical information that can be used to evaluate the effectiveness of current and proposed emission control strategies aimed at achieving compliance with the National Ambient Air Quality Standards requirements. The data will also provide a key source of information that is essential to furthering an overall understanding of those emission sources that contribute to ambient community exposure to toxic air contaminants. Another key benefit is the ability to measure the change in the ambient air concentration of the individual target species and quantify control measure effectiveness. Data from these monitors may be publicly accessible through the TCEQ's website and may be used in evaluating air quality in the area, including ozone forecasts, and ozone warnings.

c. Minimum Expenditure

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

University of Texas at Arlington  
Attention: Lisa London, Executive Director  
Division for Enterprise Development  
140 W. Mitchell Street  
Arlington, Texas 76019-0197

**3. Records and Reporting**

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

J-W Operating Company  
Agreed Order - Attachment A

Texas Commission on Environmental Quality  
Enforcement Division  
Attention: SEP Coordinator, MC 219  
PO Box 13087  
Austin, Texas 78711-3087

#### **4. Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, Respondent shall submit a check for any remaining amount due made payable to "Texas Commission on Environmental Quality" with the notation "SEP Refund" and the docket number of the case, and shall mail it to:

Texas Commission on Environmental Quality  
Office of Legal Services  
Attention: SEP Coordinator, MC 175  
PO 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(s). 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 Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	29-Dec-2010	<b>Screening</b>	29-Dec-2010	<b>EPA Due</b>	25-Sep-2011
	<b>PCW</b>	28-Jan-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	J-W Operating Company		
<b>Reg. Ent. Ref. No.</b>	RN100791417		
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	40916	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-0039-AIR-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Air	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	John Muennink
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$350,000**

### 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 for 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** **\$87,500**

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

Total EB Amounts \$234  
 Approx. Cost of Compliance \$5,000  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$262,500**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** -19.0% **Adjustment** **-\$50,000**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended reduction for self-reporting the violation after identifying the release and taking immediate corrective action.

**Final Penalty Amount** **\$212,500**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$212,500**

**DEFERRAL** 0.0% Reduction **Adjustment** **\$0**

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

Notes: No deferral is recommended for Findings Orders.

**PAYABLE PENALTY** **\$212,500**

Screening Date 29-Dec-2010

Docket No. 2011-0039-AIR-E

PCW

Respondent J-W Operating Company

Policy Revision 2 (September 2002)

Case ID No. 40916

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100791417

Media [Statute] Air

Enf. Coordinator John Muennink

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

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) 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 for compliance history.

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

Screening Date 29-Dec-2010

Docket No. 2011-0039-AIR-E

PCW

Respondent J-W Operating Company

Policy Revision 2 (September 2002)

Case ID No. 40916

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN100791417

Media [Statute] Air

Enf. Coordinator John Muennink

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 106.352 and 106.512, Tex. Health & Safety Code § 382.085(b) and Permit By Rule Registration No. 74342

Violation Description Failed to comply with the annual allowable emissions rate. Specifically, on December 28, 2010, the Respondent met with TCEQ staff and self-reported an exceedance of the volatile organic compound ("VOC") annual emission rate of 17.18 tons per year at the Plant. From April 27, 2010 to December 27, 2010, the emissions from the natural gas liquid ("NGL") storage tank were routed to the process vent rather than to the Plant inlet as designed, resulting in the release of 499.5 tons of VOC.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	x			100%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment has been exposed to a significant amount of pollutants that exceed levels protective of human health or environmental receptors.

Adjustment \$0

\$10,000

Violation Events

Number of Violation Events 35 245 Number of violation days

daily	
weekly	x
monthly	
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$350,000

Thirty-five weekly events are recommended based on the date that the violation began on April 27, 2010 to the violation end date of December 27, 2010.

Good Faith Efforts to Comply

25.0% Reduction

\$87,500

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

Notes The Respondent completed corrective measures on December 27, 2010, prior to the NOE date of December 29, 2010.

Violation Subtotal \$262,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$234

Violation Final Penalty Total \$212,500

This violation Final Assessed Penalty (adjusted for limits) \$212,500

# Economic Benefit Worksheet

**Respondent** J-W Operating Company  
**Case ID No.** 40916  
**Rea. Ent. Reference No.** RN100791417  
**Media** Air  
**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	27-Apr-2010	27-Dec-2010	0.67	\$11	\$223	\$234
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated expense to route VOC emissions to the plant inlet. The Date Required is the date that the violation began. The Final Date is the date that corrective measures 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

\$5,000

**TOTAL**

\$234

# Compliance History

Customer/Respondent/Owner-Operator: CN601349715 J-W Operating Company Classification: AVERAGE Rating: 2.46

Regulated Entity: RN100791417 SWEETWATER CREEK GAS PLANT Classification: HIGH Site Rating: 0.00

ID Number(s): AIR NEW SOURCE PERMITS ACCOUNT NUMBER WNO216M  
AIR NEW SOURCE PERMITS REGISTRATION 74342

Location: THE NORTH SIDE OF COUNTY ROAD 4522, APPROXIMATELY  
2.5 MILES EAST OF THE INTERSECTION OF FARM-TO-MARKET ROAD 2264  
AND COUNTY ROAD 4522

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: January 04, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 04, 2006 to January 04, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: John Muennink Phone: (713) 422-8970

## 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: 9/1/2010 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |    |            |          |
|----|------------|----------|
| 1  | 02/28/2007 | (541613) |
| 2  | 04/09/2009 | (738146) |
| 3  | 06/04/2009 | (745974) |
| 4  | 06/04/2009 | (747306) |
| 5  | 06/11/2009 | (747634) |
| 6  | 06/11/2009 | (748266) |
| 7  | 06/11/2009 | (748700) |
| 8  | 06/11/2009 | (748705) |
| 9  | 06/11/2009 | (748742) |
| 10 | 06/11/2009 | (748840) |
| 11 | 06/11/2009 | (748866) |
| 12 | 07/20/2009 | (760855) |
| 13 | 07/21/2009 | (761363) |
| 14 | 09/30/2009 | (763442) |
| 15 | 09/30/2009 | (763513) |
| 16 | 12/29/2010 | (886249) |
- 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  
J-W OPERATING COMPANY  
RN100791417**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2011-0039-AIR-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding J-W Operating Company ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, represented by Celina Romero of the law firm of Duggins Wren Mann & Romero, LLP, presented this agreement to the Commission.

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

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

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

### I. FINDINGS OF FACT

1. The Respondent owns and operates the Sweetwater Creek Gas Plant on the north side of County Road 4522, approximately 2.5 miles east of the intersection of Farm-to-Market Road 2264 and County Road 4522 in Wise County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During a record review conducted on December 28, 2010 through December 29, 2010, TCEQ staff documented that the Respondent failed to comply with the annual allowable emissions rate. Specifically, on December 28, 2010, the Respondent met with TCEQ staff and self-reported an exceedance of the volatile organic compound ("VOC") annual emission rate of 17.18 tons per year at the Plant. From April 27, 2010 to December 27, 2010, the emissions from the natural gas liquid ("NGL") storage tank were routed to the process vent rather than to the Plant inlet as designed, resulting in the release of 499.5 tons of VOC.
4. The Respondent received notice of the violations on February 5, 2011.
5. The Executive Director recognizes that the Respondent closed the vent on the NGL tank vapor return line on December 27, 2010, re-directing the vapors back to the plant inlet, and on December 29, 2010, the Respondent permanently disconnected the piping from the NGL storage tank to the process vent.

### II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to comply with the annual allowable emissions rate, in violation of 30 TEX. ADMIN. CODE §§ 106.352 and 106.512, TEX. HEALTH & SAFETY CODE § 382.085(b) and Permit By Rule Registration No. 74342.
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Two Hundred Twelve Thousand Five Hundred Dollars (\$212,500) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Two Hundred Twelve Thousand Five Hundred Dollars (\$212,500) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

### III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Two Hundred Twelve Thousand Five Hundred Dollars (\$212,500) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here.
2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 4 above, Two Hundred Twelve Thousand Five Hundred Dollars (\$212,500) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Plant operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. 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.
9. 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.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

*[Signature]*

\_\_\_\_\_  
For the Executive Director

\_\_\_\_\_  
Date

*6/17/2011*

I, the undersigned, have read and understand the attached Agreed Order in the matter of J-W Operating Company. I am authorized to agree to the attached Agreed Order on behalf of J-W Operating Company, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, J-W Operating Company waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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.

*C.D. McDaniels*  
\_\_\_\_\_  
Signature

*4-21-11*  
\_\_\_\_\_  
Date

*C.D. McDaniels*  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
J-W Operating Company

*Executive Vice President*  
\_\_\_\_\_  
Title



**Attachment A**  
**Docket Number: 2011-0039-AIR-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>J-W Operating Company</b>
<b>Penalty Amount:</b>	<b>Two Hundred Twelve Thousand Five Hundred Dollars (\$212,500)</b>
<b>SEP Offset Amount:</b>	<b>Two Hundred Twelve Thousand Five Hundred Dollars (\$212,500)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>University of Texas at Arlington</b>
<b>Project Name:</b>	<b>Texas Air Monitoring Network SEP</b>
<b>Location of SEP:</b>	<b>All Counties Statewide</b>

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

**1. Project Description**

a. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the University of Texas at Arlington for the *Texas Air Monitoring Network SEP* to be used as set forth in an agreement between the Third-Party Recipient and the TCEQ (the “Project”). Specifically, SEP funds will be used to construct, operate, maintain, and potentially expand a network of continuous ambient monitoring stations (“CAMS”) that monitor both air toxics and ozone precursors. Each CAMS will feature an automated gas-chromatograph (“Auto-GC”) which shall monitor ambient air for chemical compounds that could potentially affect human health and welfare and ozone formation. The current target analyte list for each Auto GC includes approximately 48 parameters. An oxides of nitrogen monitor, sulfur dioxide monitor and meteorological data instruments may also be installed at sites in the future upon approval from TCEQ.

Specifically, SEP Funds shall be used for site preparation, equipment purchase, operation and maintenance of an air monitoring network in the state of Texas in order to provide information on data quality and trends to the public, TCEQ, and industry representatives. Contingent upon funding and priorities, each of the CAMS locations shall measure air quality for a variety of parameters. Hourly measurements shall be

J-W Operating Company  
Agreed Order - Attachment A

reported for approximately 48 parameters that participate in the formation of ground level ozone and several of which are designated by the EPA as Hazardous Air Pollutants ("HAPs"). The speciated measurements shall be made using an Auto-GC. In the future at TCEQ's direction, both 5-minute and hourly averaged measurements of oxides of nitrogen ("NO<sub>x</sub>"), nitric oxide ("NO"), and nitrogen dioxide ("NO<sub>2</sub>"), ozone ("O<sub>3</sub>"), sulfur dioxide ("SO<sub>2</sub>") and meteorological parameters (i.e., wind speed, wind direction, horizontal wind standard deviation, wind gust, net radiation, and outside air temperature) may be measured and reported. Other parameters may be considered dependent upon funding. The data from this program shall be collected, validated and quality assured using methodologies consistent with TCEQ standards. Available data from each CAMS shall be uploaded every 15 minutes via a web based portal directly to TCEQ's air quality information database which TCEQ may make available to the public via the TCEQ public web site.

The SEP shall be conducted under a TCEQ-approved Quality Assurance Project Plan containing all applicable EPA QA-R5 elements. Analysis of all data collected from these sites will comply with standard operating procedures for the analysis and measurement of air toxics and ozone precursors in ambient air. The laboratory data generated by this project will be from a TCEQ accredited laboratory in compliance with state laws and rules regarding use of certified or accredited testing laboratories. For example, data submitted must comply with 30 Texas Administrative Code, Chapter 25, Subchapter A, relating to Environmental Testing Laboratory Accreditation and Certification, as amended, where applicable. The data collected using SEP Funds will be validated and sent to TCEQ's LEADS system and EPA's AQS. All costs associated with the collection, transfer, and formatting of this data to be compatible with the LEADS system and the AQS System may utilize SEP funds.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

b. Environmental Benefit

This air monitoring project will provide data to help prevent pollution and reduce the amount of pollutants reaching the environment. Data from these monitors may be used to evaluate the effectiveness of current emission control strategies, track ambient concentration trends for key pollutants of interest, evaluate episodic emission events, conduct source attribution studies, support enforcement actions and assess potential community exposure to toxic air contaminants.

This SEP will collect data sets that can be used to evaluate and track air pollution emission events as they occur, and to assess potential ambient community exposure to a limited number of HAPs. Data from the monitors will be used with data from other monitors to provide critical information that can be used to evaluate the effectiveness of current and proposed emission control strategies aimed at achieving compliance with the National Ambient Air Quality Standards requirements. The data will also provide a key source of information that is essential to furthering an overall understanding of those emission sources that contribute to ambient community exposure to toxic air contaminants. Another key benefit is the ability to measure the change in the ambient air concentration of the individual target species and quantify control measure effectiveness. Data from these monitors may be publicly accessible through the TCEQ's website and may be used in evaluating air quality in the area, including ozone forecasts, and ozone warnings.

c. Minimum Expenditure

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

University of Texas at Arlington  
Attention: Lisa London, Executive Director  
Division for Enterprise Development  
140 W. Mitchell Street  
Arlington, Texas 76019-0197

**3. Records and Reporting**

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

J-W Operating Company  
Agreed Order - Attachment A

Texas Commission on Environmental Quality  
Enforcement Division  
Attention: SEP Coordinator, MC 219  
PO Box 13087  
Austin, Texas 78711-3087

#### **4. Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, Respondent shall submit a check for any remaining amount due made payable to "Texas Commission on Environmental Quality" with the notation "SEP Refund" and the docket number of the case, and shall mail it to:

Texas Commission on Environmental Quality  
Office of Legal Services  
Attention: SEP Coordinator, MC 175  
PO 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(s). 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 Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.