

**Executive Summary – Enforcement Matter – Case No. 41916**

**City of Commerce**

**RN102178233**

**Docket No. 2011-1032-MWD-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

**Media:**

MWD

**Small Business:**

No

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

City of Commerce WWTF, located approximately 0.5 mile south of the intersection of Charity Road and Farm-to-Market Road 3218, on the east side of Farm-to-Market Road 3218, Hunt County

**Type of Operation:**

Wastewater treatment facility

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** November 18, 2011

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$38,800

**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:** \$38,800

Name of SEP: Asbestos Abatement Project

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

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**City of Commerce**  
**RN102178233**  
**Docket No. 2011-1032-MWD-E**

***Investigation Information***

**Complaint Date(s):** N/A  
**Complaint Information:** N/A  
**Date(s) of Investigation:** May 2, 2011  
**Date(s) of NOE(s):** June 8, 2011

***Violation Information***

Failed to ensure that the Facility and all of its systems of collection, treatment and disposal are properly operated and maintained, and failed to comply with permitted limits for total suspended solids, carbonaceous biochemical oxygen demand, total chlorine residual, and fecal coliform bacteria [Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010555001, Operational Requirements No. 1 and Effluent Limitations and Monitoring Requirements Nos. 1, 2, and 4, and 30 TEX. ADMIN. CODE § 305.125(5)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

1. The Order will require the Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A)
2. The Order will also require the Respondent to:
  - a. Within 30 days, develop and implement standard operating procedures ("SOP") to ensure that the Facility and all of its systems of collection, treatment, and disposal are properly operated. The procedures shall include a process that will allow excess flows to be maintained throughout the plant by diverting flows to the equalization basins and the storm water pond during heavy rainfalls. The procedures should also ensure that solids are not washed out and that permitted effluent limits are maintained; and
  - b. Within 90 days, submit certification demonstrating compliance with the permitted effluent limitations of TPDES Permit No. WQ0010555001 and Ordering Provision No. 2.a. including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted limitations.

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**City of Commerce**

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***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:** Cheryl Thompson, Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5886; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.

**TCEQ SEP Coordinator:** Sharon Blue, SEP Coordinator, Litigation Division, MC 175, (512) 239-2223

**Respondent:** Marc Clayton, City Manager, City of Commerce, 1119 Alamo Street, Commerce, Texas 75428

**Respondent's Attorney:** N/A



**Attachment A**  
**Docket Number: 2011-1032-MWD-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	City of Commerce
<b>Penalty Amount:</b>	Thirty-Eight Thousand Eight Hundred Dollars (\$38,800)
<b>SEP Offset Amount:</b>	Thirty-Eight Thousand Eight Hundred Dollars (\$38,800)
<b>Type of SEP:</b>	Custom
<b>Project Name:</b>	Asbestos Abatement Project
<b>Location of SEP:</b>	Hunt County

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

**1. Project Description**

A. Project

Respondent shall remove and properly dispose of asbestos from two structures located at the City Park that the Respondent has deemed to be unsafe. The City Park is located on the northwest corner of the block between Park Street and Pecan Street. Respondent has performed an asbestos survey of the structures using a licensed Individual Asbestos Consultant. The consultant collected samples of suspected asbestos containing building materials (ACBMs).

Respondent shall bid and use licensed removal contractors to properly remove all asbestos-containing materials before the structures are demolished and removed. To ensure that the asbestos removal will comply with state and federal regulations, prior to demolition activities, ACBMs in the area to be disturbed will be abated by a qualified asbestos contractor under monitoring and supervision of a qualified asbestos consultant.

Respondent shall use the SEP Offset Amount for the costs of the contractor(s) to remove the asbestos and remove the structures from the park, equipment and fuel costs, materials, and supplies.

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

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

**B. Environmental Benefit**

The SEP will provide a discernible environmental benefit by resulting in the proper removal of asbestos-containing materials from the structure by a certified contractor, decreasing exposure of children to the inhalation of asbestos fibers that can cause lung cancer, asbestosis, and mesothelioma.

Chronic exposure to asbestos may increase the risk of lung cancer, a malignant tumor that invades and obstructs the lung's air passages; mesothelioma, a rare cancer, which may affect the lining of the lungs or the abdominal contents; and asbestosis, a serious progressive, long-term disease of the lungs that can be fatal.

**C. Minimum Expenditure**

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

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall begin implementation of the SEP. Respondent shall have completed the SEP in its entirety within 365 days after the effective date of this Agreed Order.

**3. Records and Reporting**

**A. Progress Report**

Within 30 days after the effective date of this Agreed Order, Respondent shall submit a Notice of Commencement to the TCEQ describing actions taken to begin the project. Within 90 days of the effective date of this Agreed Order, Respondent shall submit a report detailing the progress made on the project during the previous 60-day period and setting forth a schedule for achieving completion of the project within the time-frame required in Section 2, *Performance Schedule*, above. Thereafter, Respondent shall submit progress reports to the TCEQ in the following increments and containing detailed information as set forth in the Reporting Schedule table below:

Days from Effective Order Date	Information Required
30	Notice of Commencement describing actions taken to begin project
90	Actions taken during previous 60-day period to implement the project
180	Actions taken during previous 90-day period to implement the project
270	Actions taken during previous 90-day period to implement the project

Days from Effective Order Date	Information Required
365	Notice of SEP completion

**B. Final Report**

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

1. Itemized list of expenditures;
2. Summary total of all costs;
3. Copies of itemized invoices, paid receipts, and copies of checks or payment records for each expense;
4. Copy of bid invitations containing required enforcement statement;
5. Verification of proper labeling and disposal of asbestos-containing materials and asbestos disposal compliance forms;
6. Total amount of asbestos removed from the properties;
7. Photographs of the project;
8. Certified/notarized statement of quantifiable environmental benefit;
9. Any additional information that will demonstrate compliance with this Attachment A

**C. Address**

Respondent shall submit all SEP reports and any requested additional information to the following address:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
PO Box 13087  
Austin, Texas 78711-31087

**4. Additional Information and Access**

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

**5. Failure to Fully Perform**

If Respondent does not perform its obligations under this Attachment A in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in

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

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

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

## **6. 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.

## **7. 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.

## **8. 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>	Assigned	13-Jun-2011	Screening	23-Jun-2011	EPA Due	
	PCW	24-Jun-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	City of Commerce		
Reg. Ent. Ref. No.	RN102178233		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Major

<b>CASE INFORMATION</b>			
Enf./Case ID No.	41916	No. of Violations	1
Docket No.	2011-1032-MWD-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Cheryl Thompson
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

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

Notes: Enhancement for five months of self reported effluent violations, four NOV's with same/similar violations, two NOV's with dissimilar violations, one Agreed Order with denial of liability and one Agreed Order without denial of liability.

**Culpability**   Enhancement **Subtotal 4**

Notes: The Respondent does not meet the culpability criteria.

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

**Economic Benefit**  Enhancement\* **Subtotal 6**

Total EB Amounts   
Approx. Cost of Compliance  \*Capped at the Total EB \$ Amount

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

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

Notes:

No deferral is recommended for Findings Orders.

**PAYABLE PENALTY**

Screening Date 23-Jun-2011

Docket No. 2011-1032-MWD-E

PCW

Respondent City of Commerce

Policy Revision 2 (September 2002)

Case ID No. 41916

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102178233

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	9	45%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	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)** 94%

#### >> 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**

Enhancement for five months of self reported effluent violations, four NOVs with same/similar violations, two NOVs with dissimilar violations, one Agreed Order with denial of liability and one Agreed Order without denial of liability.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 94%

**Screening Date** 23-Jun-2011  
**Respondent** City of Commerce  
**Case ID No.** 41916  
**Reg. Ent. Reference No.** RN102178233  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Cheryl Thompson  
**Violation Number** 1

**Docket No.** 2011-1032-MWD-E

**PCW**

Policy Revision 2 (September 2002)  
 PCW Revision October 30, 2008

**Rule Cite(s)**

Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010555001, Operational Requirements No. 1 and Effluent Limitations and Monitoring Requirements Nos. 1, 2 and 4 and 30 Tex. Admin. Code § 305.125(5)

**Violation Description**

Failed to ensure that the Facility and all of its systems of collection, treatment and disposal are properly operated and maintained and failed to comply with permitted effluent limits. Specifically, the Respondent failed to adequately operate the final clarifiers and chlorine contact chamber to prevent significant solids washout after heavy rainfall events to the receiving stream, which resulted in exceedances of permit limits and elevated levels of fecal coliform bacteria. Grab samples taken during the investigation indicated elevated levels of total suspended solids [(2,080 milligrams per liter ("mg/L")), carbonaceous biochemical oxygen demand (111 mg/L), total chlorine residual (0.96 mg/L), and fecal coliform bacteria (36,000 colonies/100 mg/L).

**Base Penalty** \$10,000

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

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

**Percent** 100%

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor

**Percent** 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which exceed levels that are protective of human health or the environment.

**Adjustment** \$0

\$10,000

**Violation Events**

Number of Violation Events: 2      52      Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

**Violation Base Penalty** \$20,000

Two monthly events are recommended from the period of May 2, 2011 (date of investigation) to June 23, 2011 (date of screening).

**Good Faith Efforts to Comply**

0.0% Reduction

\$0

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

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

**Violation Subtotal** \$20,000

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$375

**Violation Final Penalty Total** \$38,800

**This violation Final Assessed Penalty (adjusted for limits)** \$38,800

# Economic Benefit Worksheet

**Respondent** City of Commerce  
**Case ID No.** 41916  
**Reg. Ent. Reference No.** RN102178233  
**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
<small>No commas or \$</small>							

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	2-May-2011	31-Jan-2012	0.75	\$375	n/a	\$375

Notes for DELAYED costs

Estimated cost to develop and implement improved operational and maintenance procedures to ensure that the Facility and all of its systems of collection, treatment, and disposal are properly operated and maintained, to include the clarifiers and chlorine contact chamber to prevent solids washout. Date required is the investigation date. The final date is the projected date of compliance.

**Avoided Costs**

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance	\$10,000	<b>TOTAL</b>	\$375
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## Compliance History

Customer/Respondent/Owner-Operator:	CN600729933	City of Commerce	Classification: AVERAGE	Rating: 3.19
Regulated Entity:	RN102178233	CITY OF COMMERCE WWTF	Classification: AVERAGE	Site Rating: 4.51
ID Number(s):	WASTEWATER	PERMIT		WQ0010555001
	WASTEWATER	EPA ID		TX0020591
	WASTEWATER LICENSING	LICENSE		WQ0010555001
	AIR QUALITY NON PERMITTED	ID NUMBER		R04102178233
Location:	located approximately 0.5 mile south of the intersection of Charity Road and Farm-to-Market Road 3218, on the east side of Farm-to-Road 3218 in Hunt County, Texas			
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	June 23, 2011			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	June 23, 2006 to June 23, 2011			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	<u>Cheryl Thompson</u>	Phone:	<u>(817) 588-5886</u>	

### 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.
- |   |                            |
|---|----------------------------|
| Effective Date: 09/21/2006  | ADMINORDER 2006-0298-MWD-E |
| Classification: Moderate  |                            |
| Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)<br>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.           |                            |
| Classification: Moderate  |                            |
| Citation: 30 TAC Chapter 305, SubChapter F 305.125(17)  |                            |
| Rqmt Prov: Self-reporting Requirements PERMIT   |                            |
| Description: Failure to submit monitoring results at the intervals specified in the permit as documented by a TCEQ record review. |                            |
| Classification: Major   |                            |
| Citation: 30 TAC Chapter 305, SubChapter F 305.125(17)  |                            |
| Rqmt Prov: Self-reporting Requirements PERMIT   |                            |
| Description: Failure to submit monitoring results for the pH daily maximum.   |                            |
| Effective Date: 10/04/2007  |                            |
| ADMINORDER 2007-0187-MWD-E  |                            |
| Classification: Major   |                            |
| Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)   |                            |
| Rqmt Prov: Permit PERMIT  |                            |
| Description: unauthorized discharge of approximately 95,123 gallons of sewage from a blocked sewer line resulting in a fish kill. |                            |
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	08/16/2006	(463027)
2	09/25/2006	(520656)
3	10/17/2006	(520657)
4	12/18/2006	(533752)
5	01/16/2007	(536647)
6	02/14/2007	(537158)
7	01/31/2007	(538585)
8	02/15/2007	(545051)
9	09/22/2006	(545052)
10	11/13/2006	(545053)
11	09/22/2006	(545054)
12	03/19/2007	(576286)
13	04/18/2007	(576287)
14	05/17/2007	(576288)
15	06/18/2007	(576289)
16	06/01/2007	(576290)
17	08/10/2007	(576291)
18	03/21/2007	(576292)
19	11/28/2007	(599330)
20	09/17/2007	(601899)
21	10/17/2007	(601900)
22	10/02/2007	(601901)
23	12/27/2007	(611403)
24	11/20/2007	(619879)
25	12/17/2007	(619880)
26	04/07/2008	(641482)
27	04/24/2008	(653849)
28	02/12/2008	(672351)
29	03/12/2008	(672352)
30	04/07/2008	(672353)
31	03/21/2008	(672354)
32	02/17/2011	(688708)
33	05/12/2008	(690266)
34	06/11/2008	(690267)
35	05/27/2008	(690268)
36	08/18/2008	(711094)
37	09/17/2008	(711095)
38	10/08/2008	(711096)
39	11/11/2008	(727745)
40	12/08/2008	(727746)
41	02/13/2009	(750587)
42	03/11/2009	(750588)
43	04/22/2009	(750589)
44	02/27/2009	(750590)
45	02/27/2009	(750591)
46	05/18/2009	(768573)
47	06/08/2009	(768574)
48	02/23/2010	(805517)

49	09/11/2009	(805518)
50	09/15/2009	(805519)
51	10/15/2009	(805520)
52	11/13/2009	(805521)
53	12/14/2009	(805522)
54	07/20/2010	(824901)
55	03/19/2010	(831184)
56	04/13/2010	(831185)
57	05/11/2010	(831186)
58	06/23/2010	(846359)
59	08/24/2010	(849633)
60	07/13/2010	(860939)
61	08/30/2010	(866938)
62	09/07/2010	(869837)
63	09/10/2010	(874005)
64	10/07/2010	(881608)
65	11/08/2010	(888112)
66	12/08/2010	(896350)
67	03/11/2011	(900792)
68	01/05/2011	(902402)
69	04/06/2011	(908501)
70	02/09/2011	(909184)
71	03/07/2011	(916441)
72	06/08/2011	(919633)
73	04/13/2011	(924998)

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

Date:	12/13/2006	(533752)	CN600729933
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) WQ0010555-001 PERMIT		
Description:	Failure to conduct the annual sludge analyses.		
Self Report?	NO		Classification: Moderate
Citation:	TWC Chapter 26 26.121(a)(1) WQ0010555-01 PERMIT		
Description:	Failure to prevent an unauthorized discharge, mitigate the affected area, and properly dispose of sludge.		
Self Report?	YES		Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) WQ0010555-001 PERMIT		
Description:	Failure to provide noncompliance notification as required.		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 319, SubChapter A 319.7(e)		
Description:	Failure to accurately calculate and report annual average flow.		
Date:	02/28/2007	(576286)	CN600729933
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:	11/30/2007	(599330)	CN600729933
Self Report?	NO		Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(5) WQ0010555-001 PERMIT		
Description:	Failure to properly maintain facilities and treatment systems.		
Self Report?	NO		Classification: Minor
Citation:	30 TAC Chapter 319, SubChapter A 319.7(e)		
Description:	Failure to accurately calculate and report annual average flow.		
Self Report?	NO		Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)  
 30 TAC Chapter 317 317.4(d)  
 Operational Requirements #1, page 9 OP  
 Description: Failure to level the #2 clarifier weir noted during a previous investigation.  
 Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)  
 Description: Failure to secure the perimeter of the WWTF.

Date 04/07/2008 (641482) CN600729933  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 319, SubChapter C 319.302  
 Description: Failure to provide the required public notification of a spill or accidental discharge of untreated wastewater. As a result of the rainfall event of March 18, 2008, untreated wastewater from the collection system and partially treated wastewater from the wastewater treatment facility (WWTF) were discharged in sufficient volume to trigger the notification requirements of 30 Texas Administrative Code, Chapter 319, Subchapter C.

Date 06/30/2008 (672354) CN600729933  
 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 08/31/2008 (711095) CN600729933  
 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 01/31/2010 (805517) CN600729933  
 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 03/31/2010 (831185) CN600729933  
 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 07/21/2010 (824901) CN600729933  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 317 317.4(a)(8)  
 30 TAC Chapter 317 317.7(i)  
 Description: Failure to perform annual certification on RPZ unit. The last certification was conducted on April 28, 2009. The certification supplied states the location as the water plant.

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to properly dispose of sludge. The City of Commerce's TPDES permit does not authorize storage of sludge (other than in the sludge lagoons).

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to produce effluent within permit parameters. Since the previous investigation in November 2007, Commerce has reported the following exceedances of permit limits:

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 TPDES10555-001, Operational Requirements PERMIT  
 Description: Failure to properly operate and maintain the WWTF. On the day of the investigation the following items were observed:  
 one clarifier was not in service  
 both clarifiers had an excessive accumulation of floating solids  
 there was a modest accumulation of solids in the chlorine contact chamber  
 both aeration basins contained modest quantities of foam that was carrying over to the clarifiers  
 one aerobic digester was not in service due to malfunctioning aerators.

Date 09/07/2010 (869837) CN600729933  
 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 03/11/2011

(900792)

CN600729933

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 305, SubChapter F 305.125(5)  
30 TAC Chapter 305, SubChapter F 305.125(7)  
TWC Chapter 26 26.121  
WQ0010555-001 PERMIT  
WQ001555-001 PERMIT

Description: Failure to adequately operate and maintain the plant.

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 COMMERCE  
RN102178233**

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

**AGREED ORDER  
DOCKET NO. 2011-1032-MWD-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 the City of Commerce (“the Respondent”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent 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 a wastewater treatment facility located approximately 0.5 mile south of the intersection of Charity Road and Farm-to-Market Road 3218, on the east side of Farm-to-Road 3218 in Hunt County, Texas (the “Facility”).

2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. During an investigation on May 2, 2011, TCEQ staff documented the Respondent did not adequately operate the final clarifiers and chlorine contact chamber to prevent significant solids washout after heavy rainfall events to the receiving stream, which resulted in exceedances of permit limits and elevated levels of fecal coliform bacteria. Grab samples taken during the investigation indicated elevated levels of total suspended solids [(2,080 milligrams per liter ("mg/L")), carbonaceous biochemical oxygen demand (111 mg/L), total chlorine residual (0.96 mg/L), and fecal coliform bacteria (36,000 colonies/100 mg/L).
4. The Respondent received notice of the violations on June 13, 2011.

## **II. CONCLUSIONS OF LAW**

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to ensure that the Facility and all of its systems of collection, treatment and disposal are properly operated and maintained, and failed to comply with permitted limits, in violation of Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010555001, Operational Requirements No. 1 and Effluent Limitations and Monitoring Requirements Nos. 1, 2, and 4 and 30 TEX. ADMIN. CODE § 305.125(5).
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 Thirty-Eight Thousand Eight Hundred Dollars (\$38,800) 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. Thirty-Eight Thousand Eight Hundred Dollars (\$38,800) shall be conditionally offset by 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 Thirty-Eight Thousand Eight Hundred Dollars (\$38,800) 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. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Commerce, Docket No. 2011-1032-MWD-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE§ 7.067. As set forth in Conclusions of Law Section II, Paragraph 4 above, Thirty-Eight Thousand Eight Hundred Dollars (\$38,800) of the assessed administrative penalty shall be offset with the condition that 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. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, develop and implement standard operating procedures ("SOP") to ensure that the Facility and all of its systems of collection, treatment, and disposal are properly operated. The procedures shall include a process that will allow excess flows to be maintained throughout the plant by diverting flows to the equalization basins and the storm water pond during heavy rainfalls. The procedures should also ensure that solids are not washed out and that permitted effluent limits are maintained. A copy of the SOP shall be submitted to the TCEQ Dallas-Fort Worth Regional office at the address shown below; and
  - b. Within 90 days after the effective date of this Agreed Order, submit certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0010555001 and Ordering Provision No. 3.a. including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted limitations. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe

that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

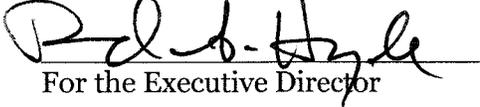
4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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.

8. This Agreed Order shall terminate five years from its effective date or upon compliance with the terms and conditions set forth in this Agreed Order, whichever is later.
9. 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.
10. 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.
11. 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

  
For the Executive Director

12/2/11  
Date

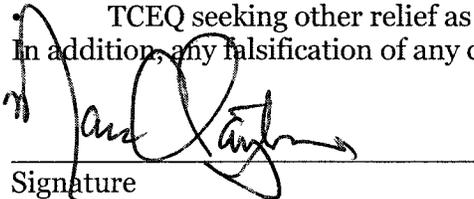
I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Commerce. I am authorized to agree to the attached Agreed Order on behalf of the City of Commerce, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting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

I understand that by entering into this Agreed Order, the City of Commerce 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.

  
Signature

9/29/11  
Date

MARC CLAYTON  
Name (Printed or typed)  
Authorized Representative of  
City of Commerce

City Manager  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.

**Attachment A**  
**Docket Number: 2011-1032-MWD-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	City of Commerce
<b>Penalty Amount:</b>	Thirty-Eight Thousand Eight Hundred Dollars (\$38,800)
<b>SEP Offset Amount:</b>	Thirty-Eight Thousand Eight Hundred Dollars (\$38,800)
<b>Type of SEP:</b>	Custom
<b>Project Name:</b>	Asbestos Abatement Project
<b>Location of SEP:</b>	Hunt County

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

**1. Project Description**

**A. Project**

Respondent shall remove and properly dispose of asbestos from two structures located at the City Park that the Respondent has deemed to be unsafe. The City Park is located on the northwest corner of the block between Park Street and Pecan Street. Respondent has performed an asbestos survey of the structures using a licensed Individual Asbestos Consultant. The consultant collected samples of suspected asbestos containing building materials (ACBMs).

Respondent shall bid and use licensed removal contractors to properly remove all asbestos-containing materials before the structures are demolished and removed. To ensure that the asbestos removal will comply with state and federal regulations, prior to demolition activities, ACBMs in the area to be disturbed will be abated by a qualified asbestos contractor under monitoring and supervision of a qualified asbestos consultant.

Respondent shall use the SEP Offset Amount for the costs of the contractor(s) to remove the asbestos and remove the structures from the park, equipment and fuel costs, materials, and supplies.

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

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

**B. Environmental Benefit**

The SEP will provide a discernible environmental benefit by resulting in the proper removal of asbestos-containing materials from the structure by a certified contractor, decreasing exposure of children to the inhalation of asbestos fibers that can cause lung cancer, asbestosis, and mesothelioma.

Chronic exposure to asbestos may increase the risk of lung cancer, a malignant tumor that invades and obstructs the lung's air passages; mesothelioma, a rare cancer, which may affect the lining of the lungs or the abdominal contents; and asbestosis, a serious progressive, long-term disease of the lungs that can be fatal.

**C. Minimum Expenditure**

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

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall begin implementation of the SEP. Respondent shall have completed the SEP in its entirety within 365 days after the effective date of this Agreed Order.

**3. Records and Reporting**

**A. Progress Report**

Within 30 days after the effective date of this Agreed Order, Respondent shall submit a Notice of Commencement to the TCEQ describing actions taken to begin the project. Within 90 days of the effective date of this Agreed Order, Respondent shall submit a report detailing the progress made on the project during the previous 60-day period and setting forth a schedule for achieving completion of the project within the time-frame required in Section 2, *Performance Schedule*, above. Thereafter, Respondent shall submit progress reports to the TCEQ in the following increments and containing detailed information as set forth in the Reporting Schedule table below:

Days from Effective Order Date	Information Required
30	Notice of Commencement describing actions taken to begin project
90	Actions taken during previous 60-day period to implement the project
180	Actions taken during previous 90-day period to implement the project
270	Actions taken during previous 90-day period to implement the project

Days from Effective Order Date	Information Required
365	Notice of SEP completion

**B. Final Report**

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

1. Itemized list of expenditures;
2. Summary total of all costs;
3. Copies of itemized invoices, paid receipts, and copies of checks or payment records for each expense;
4. Copy of bid invitations containing required enforcement statement;
5. Verification of proper labeling and disposal of asbestos-containing materials and asbestos disposal compliance forms;
6. Total amount of asbestos removed from the properties;
7. Photographs of the project;
8. Certified/notarized statement of quantifiable environmental benefit;
9. Any additional information that will demonstrate compliance with this Attachment A

**C. Address**

Respondent shall submit all SEP reports and any requested additional information to the following address:

Texas Commission on Environmental Quality  
Litigation Division  
Attention: SEP Coordinator, MC 175  
PO Box 13087  
Austin, Texas 78711-31087

**4. Additional Information and Access**

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

**5. Failure to Fully Perform**

If Respondent does not perform its obligations under this Attachment A in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in

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

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

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

#### **6. 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.

#### **7. 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.

#### **8. 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.