

**Executive Summary – Enforcement Matter – Case No. 43750**  
**City of Commerce**  
**RN102178233**  
**Docket No. 2012-0566-MWD-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:**

MWD

**Small Business:**

No

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

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

**Type of Operation:**

Wastewater treatment facility with an associated collection system

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** July 20, 2012

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$12,225

**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:** \$12,225

Name of SEP: Texas Association of Resource Conservation and Development Areas, Inc.

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2011

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**Docket No. 2012-0566-MWD-E**

***Investigation Information***

**Complaint Date(s):** N/A  
**Complaint Information:** N/A  
**Date(s) of Investigation:** January 5, 2012  
**Date(s) of NOE(s):** January 31, 2012

***Violation Information***

Failed to prevent a discharge of untreated wastewater from the collection system [TEX. WATER CODE § 26.121(a) and Texas Pollutant Discharge Elimination System Permit No. WQ0010555001 Permit Condition No. 2.g.].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Respondent has implemented the following corrective measures at the Facility on January 5, 2012:

- a. Removed the blockage and repaired the line which had collapsed;
- b. Pumped the discharged sewage from the irrigation pond into the nearest manhole in the collection system;
- c. Disposed of the dead fish;
- d. Disinfected the area effected by the discharge with lime; and
- e. Monitored the irrigation pond for dissolved oxygen levels.

**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

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***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Harvey Wilson, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-0321; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.

**TCEQ SEP Coordinator:** Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565

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

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



**Attachment A**  
**Docket Number: 2012-0566-MWD-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	City of Commerce
<b>Penalty Amount:</b>	Twelve Thousand Two Hundred Twenty-Five Dollars (\$12,225)
<b>SEP Offset Amount:</b>	Twelve Thousand Two Hundred Twenty-Five Dollars (\$12,225)
<b>Type of SEP:</b>	Contribution to a Third-Party Recipient SEP
<b>Third-Party Recipient:</b>	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")
<b>Project Name:</b>	<i>Abandoned Tire Cleanups and Tire Collection Events</i>
<b>Location of SEP:</b>	Hunt County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset of the administrative 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 **Texas Association of Resource Conservation & Development Areas, Inc. ("RC&D")** for the *Abandoned Tire Cleanups and Tire Collection Events*. The contribution will be used in accordance with the SEP between the Third-Party Recipient and the TCEQ (the "Project"). Specifically, the SEP Offset Amount will be used to coordinate with local city and county government officials and private entities to clean up sites where tires have been disposed of illegally, or to conduct tire collection events where residents will be able to drop off tires for proper disposal or recycling. Eligible tire cleanup sites will be limited to areas where a responsible party cannot be identified or where there is no pre-existing obligation to clean up the site by the owner or government and where reasonable efforts have been made to prevent the dumping.

All dollars contributed will be used solely for the direct cost of implementing the Project, including, but not limited to supplies, materials, and equipment. Any portion of this contribution that is not able to be spent on the specifically identified SEP may, at the discretion of the Executive Director, be applied to another pre-approved SEP. 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 Respondent has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action. Respondent shall not profit in any manner from this SEP.

B. Environmental Benefit

The SEP will help rid communities of the dangers and health threats associated with illegal tire sites.

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 must contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall make the check payable to Texas Association of Resource Conservation & Development Areas, Inc. and shall mail the contribution with a copy of the Agreed Order to:

Texas Association of Resource Conservation & Development Areas,  
Inc.  
Attention: Ken Awtrey, Executive Director  
P.O. Box 635067  
Nacogdoches, Texas 75961

**3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement 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:

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

**4. Failure to Fully Perform**

If Respondent does not perform its obligations under this Attachment A, 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 fully implement and complete the Project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP, shall make the check payable to "Texas Commission on Environmental Quality," and shall mail it to:

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

**5. Publicity**

Any public statements concerning this SEP and/or project, 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 Attachment A and in the attached 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 3 (September 2011)

PCW Revision August 3, 2011

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	6-Feb-2012	<b>Screening</b>	27-Feb-2012	<b>EPA Due</b>	
	<b>PCW</b>	27-Feb-2012				

## RESPONDENT/FACILITY INFORMATION

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

## CASE INFORMATION

<b>Enf./Case ID No.</b>	43750	<b>No. of Violations</b>	1	
<b>Docket No.</b>	2012-0566-MWD-E	<b>Order Type</b>	Findings	
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes	
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Harvey Wilson	
		<b>EC's Team</b>	Enforcement Team 3	
<b>Admin. Penalty \$</b>	<b>Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## 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, one NOV for a same/similar violation, four NOVs with dissimilar violations and two Orders 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** 27-Feb-2012

**Docket No.** 2012-0566-MWD-E

**PCW**

**Respondent** City of Commerce

Policy Revision 3 (September 2011)

**Case ID No.** 43750

PCW Revision August 3, 2011

**Reg. Ent. Reference No.** RN102178233

**Media [Statute]** Water Quality

**Enf. Coordinator** Harvey Wilson

### 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> )	6	30%
	Other written NOVs	4	8%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	2	50%
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)** 88%

>> **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, one NOV for a same/similar violation, four NOVs with dissimilar violations and two Orders without denial of liability.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 88%

>> **Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 88%

**Screening Date** 27-Feb-2012  
**Respondent** City of Commerce  
**Case ID No.** 43750

**Docket No.** 2012-0566-MWD-E

**PCW**

*Policy Revision 3 (September 2011)  
 PCW Revision August 3, 2011*

**Reg. Ent. Reference No.** RN102178233  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Harvey Wilson  
**Violation Number** 1

**Rule Cite(s)** Tex. Water Code § 26.121(a) and Texas Pollutant Discharge Elimination System Permit No. WQ0010555001 Permit Condition No. 2.g.

**Violation Description**  
 Failed to prevent an unauthorized discharge of untreated wastewater into water in the state from the collection system. Specifically, on January 5, 2012 a blockage in the sewer line collapsed the line causing a discharge of approximately 70,000 gallons of untreated wastewater into a drainage ditch leading to a pond and resulting in 76 dead fish.

**Base Penalty** \$25,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual		x			30.0%
Potential					

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
				0.0%

**Matrix Notes** Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of this violation.

**Adjustment** \$17,500

\$7,500

**Violation Events**

Number of Violation Events  Number of violation days

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

**Violation Base Penalty** \$7,500

One daily event is recommended.

**Good Faith Efforts to Comply**

Reduction

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

**Notes** Respondent achieved compliance by January 5, 2012.

**Violation Subtotal** \$5,625

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

**Statutory Limit Test**

**Estimated EB Amount** \$0

**Violation Final Penalty Total** \$12,225

**This violation Final Assessed Penalty (adjusted for limits)** \$12,225

# Economic Benefit Worksheet

**Respondent** City of Commerce  
**Case ID No.** 43750  
**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
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No commas or \$

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$10,000	5-Jan-2012	5-Jan-2012	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	\$1,000	5-Jan-2012	5-Jan-2012	0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost of repairing the burst main line, of removing the blockage, pumping sewage back into the manhole, disposing the dead fish, disinfecting the area with lime and testing the pond for dissolved oxygen levels. Date Required is the date the violation occurred. Final Date is the 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

\$11,000

**TOTAL**

\$0

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600729933 City of Commerce Classification: AVERAGE Rating: 3.16

Regulated Entity: RN102178233 CITY OF COMMERCE WWTF Classification: AVERAGE Site Rating: 4.21

ID Number(s): WASTEWATER PERMIT WQ0010555001  
WASTEWATER EPA ID TX0020591  
WASTEWATER LICENSING LICENSE WQ0010555001  
AIR QUALITY NON PERMITTED ID NUMBER R04102178233

Location: APPROXIMATELY 0.5 MILE SOUTH OF CHARITY ROAD AND FARM-TO-MARKET ROAD 3218 ON THE EAST SIDE OF FARM-TO-MARKET ROAD 3218 IN HUNT COUNTY

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: February 24, 2012

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 24, 2007 to February 24, 2012

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

Name: Harvey Wilson Phone: 239 - 0321

## 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. If YES, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 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: 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.

Effective Date: 02/05/2012 ADMINORDER 2011-1032-MWD-E

Classification: Major

Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)

Rqmt Prov: TPDES Permit No. WQ0010555-001 PERMIT

Description: Failure 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.

Classification: Major

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Rqmt Prov: WQ0010555-001 PERMIT

Description: Failure to comply with effluent grab limits for CBOD, TSS, and TRC during a solids washout event through Outfall 001.

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	03/19/2007	(576286)
2	04/18/2007	(576287)
3	05/17/2007	(576288)
4	06/18/2007	(576289)
5	06/01/2007	(576290)
6	08/10/2007	(576291)
7	03/21/2007	(576292)
8	11/28/2007	(599330)
9	09/17/2007	(601899)
10	10/17/2007	(601900)
11	10/02/2007	(601901)
12	12/27/2007	(611403)
13	11/20/2007	(619879)
14	12/17/2007	(619880)
15	04/07/2008	(641482)
16	04/24/2008	(653849)
17	02/12/2008	(672351)
18	03/12/2008	(672352)
19	04/07/2008	(672353)
20	03/21/2008	(672354)
21	02/17/2011	(688708)
22	05/12/2008	(690266)
23	06/11/2008	(690267)
24	05/27/2008	(690268)
25	08/18/2008	(711094)
26	09/17/2008	(711095)
27	10/08/2008	(711096)
28	11/11/2008	(727745)
29	12/08/2008	(727746)
30	02/13/2009	(750587)
31	03/11/2009	(750588)
32	04/22/2009	(750589)
33	02/27/2009	(750590)
34	02/27/2009	(750591)
35	05/18/2009	(768573)
36	06/08/2009	(768574)
37	02/23/2010	(805517)
38	09/11/2009	(805518)
39	09/15/2009	(805519)
40	10/15/2009	(805520)
41	11/13/2009	(805521)

42	12/14/2009	(805522)
43	07/20/2010	(824901)
44	03/19/2010	(831184)
45	04/13/2010	(831185)
46	05/11/2010	(831186)
47	06/23/2010	(846359)
48	08/24/2010	(849633)
49	07/13/2010	(860939)
50	08/30/2010	(866938)
51	09/07/2010	(869837)
52	09/10/2010	(874005)
53	10/07/2010	(881608)
54	11/08/2010	(888112)
55	12/08/2010	(896350)
56	03/11/2011	(900792)
57	01/05/2011	(902402)
58	04/06/2011	(908501)
59	02/09/2011	(909184)
60	03/07/2011	(916441)
61	06/08/2011	(919633)
62	04/13/2011	(924998)
63	06/23/2011	(934657)
64	05/06/2011	(938122)
65	06/08/2011	(945495)
66	07/18/2011	(952734)
67	08/15/2011	(959409)
68	09/19/2011	(965436)
69	10/17/2011	(971477)
70	11/07/2011	(977640)
71	02/02/2012	(981243)
72	12/13/2011	(984404)

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

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:

	Daily Average	Daily Maximum
Ammonia Nitrogen	1 2	
TSS	1 3	

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. 2012-0566-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 it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, 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 with an associated collection system located approximately 0.5 mile south of Charity Road and Farm-to-Market Road 3218 on the east side of Farm-to-Market Road 3218 in Hunt County, Texas (the “Facility”).

2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation on January 5, 2012, TCEQ staff documented an unauthorized discharge of untreated wastewater from the collection system into water in the state. Specifically, on January 5, 2012 a blockage in a sewer line collapsed the line causing a discharge of approximately 70,000 gallons of untreated wastewater into a drainage ditch leading to a pond and resulting in 76 dead fish.
4. The Respondent received notice of the violations on February 5, 2012.
5. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility on January 5, 2012:
  - a. Removed the blockage and repaired the line which had collapsed;
  - b. Pumped the discharged sewage from the irrigation pond into the nearest manhole in the collection system;
  - c. Disposed of the dead fish;
  - d. Disinfected the area effected by the discharge with lime; and
  - e. Monitored the irrigation pond for dissolved oxygen levels.

## **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 prevent a discharge of untreated wastewater from the collection system, in violation of TEX. WATER CODE § 26.121(a) and Texas Pollutant Discharge Elimination System Permit No. WQ0010555001 Permit Condition No. 2.g.
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 Twelve Thousand Two Hundred Twenty-Five Dollars (\$12,225) 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. Twelve Thousand Two Hundred Twenty-Five Dollars (\$12,225) 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 Twelve Thousand Two Hundred Twenty-Five Dollars (\$12,225) 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. 2012-0566-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 Section II, Paragraph 4 above, Twelve Thousand Two Hundred Twenty-Five Dollars (\$12,225) 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 Facility 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

  
For the Executive Director

9/5/12  
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

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

8/23/12  
Date  
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: 2012-0566-MWD-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	City of Commerce
<b>Penalty Amount:</b>	Twelve Thousand Two Hundred Twenty-Five Dollars (\$12,225)
<b>SEP Offset Amount:</b>	Twelve Thousand Two Hundred Twenty-Five Dollars (\$12,225)
<b>Type of SEP:</b>	Contribution to a Third-Party Recipient SEP
<b>Third-Party Recipient:</b>	Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")
<b>Project Name:</b>	<i>Abandoned Tire Cleanups and Tire Collection Events</i>
<b>Location of SEP:</b>	Hunt County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset of the administrative 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 **Texas Association of Resource Conservation & Development Areas, Inc. ("RC&D")** for the *Abandoned Tire Cleanups and Tire Collection Events*. The contribution will be used in accordance with the SEP between the Third-Party Recipient and the TCEQ (the "Project"). Specifically, the SEP Offset Amount will be used to coordinate with local city and county government officials and private entities to clean up sites where tires have been disposed of illegally, or to conduct tire collection events where residents will be able to drop off tires for proper disposal or recycling. Eligible tire cleanup sites will be limited to areas where a responsible party cannot be identified or where there is no pre-existing obligation to clean up the site by the owner or government and where reasonable efforts have been made to prevent the dumping.

All dollars contributed will be used solely for the direct cost of implementing the Project, including, but not limited to supplies, materials, and equipment. Any portion of this contribution that is not able to be spent on the specifically identified SEP may, at the discretion of the Executive Director, be applied to another pre-approved SEP. 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 Respondent has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action. Respondent shall not profit in any manner from this SEP.

**B. Environmental Benefit**

The SEP will help rid communities of the dangers and health threats associated with illegal tire sites.

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 must contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall make the check payable to Texas Association of Resource Conservation & Development Areas, Inc. and shall mail the contribution with a copy of the Agreed Order to:

Texas Association of Resource Conservation & Development Areas,  
Inc.  
Attention: Ken Awtrey, Executive Director  
P.O. Box 635067  
Nacogdoches, Texas 75961

**3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement 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:

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

**4. Failure to Fully Perform**

If Respondent does not perform its obligations under this Attachment A, 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 fully implement and complete the Project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP, shall make the check payable to "Texas Commission on Environmental Quality," and shall mail it to:

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

**5. Publicity**

Any public statements concerning this SEP and/or project, 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 Attachment A and in the attached 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.