

**Executive Summary – Enforcement Matter – Case No. 43004**  
**City of Arlington**  
**RN104950134**  
**Docket No. 2011-2258-WQ-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Fish Kill

**Media:**

WQ

**Small Business:**

No

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

City of Arlington Collection System, located behind Forestwood Drive and River Rock Court near the Riverside Golf Course, Arlington, Tarrant County

**Type of Operation:**

Domestic wastewater collection system with an associated manhole

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** September 14, 2012

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$11,250

**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:** \$11,250

Name of SEP: Purchase of Litter Trailer and Clean-up Events

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Poor

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2011

**Executive Summary – Enforcement Matter – Case No. 43004  
City of Arlington  
RN104950134  
Docket No. 2011-2258-WQ-E**

***Investigation Information***

**Complaint Date(s):** N/A  
**Complaint Information:** N/A  
**Date(s) of Investigation:** September 12, 2011  
**Date(s) of NOE(s):** November 3, 2011

***Violation Information***

Failed to prevent an unauthorized discharge of wastewater from the collection system into water in the State [TEX. WATER CODE § 26.121].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

Respondent has implemented the following corrective measures at the Site:

- a. On September 12 and 13, 2011, located and removed the sewer line blockages using television and jet-vac trucks, deployed two aerators into the irrigation pond to increase the dissolved oxygen and lower the ammonia levels and removed and disposed of the dead fish; and
- b. On September 22, 2011, completed the aeration of the pond.

**Technical Requirements:**

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

***Litigation Information***

**Date Petition(s) Filed:** N/A  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A  
**TCEQ Enforcement Coordinator:** Jeremy Escobar, Enforcement Division, Enforcement Team 3, MC R-14, (361) 825-3422; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.  
**TCEQ SEP Coordinator:** Sharon Blue, SEP Coordinator, Litigation Division, MC 175, (512) 239-2223  
**Respondent:** Terry Benton, Interim Director of Water Utilities, City of Arlington, 101 West Abram Street, Arlington, Texas 76010  
**Respondent's Attorney:** N/A

**Attachment A**  
**Docket Number: 2011-2258-WQ-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	City of Arlington
<b>Penalty Amount:</b>	Eleven Thousand Two Hundred Fifty Dollars (\$11,250)
<b>SEP Offset Amount:</b>	Eleven Thousand Two Hundred Fifty Dollars (\$11,250)
<b>Type of SEP:</b>	Custom
<b>Project Name:</b>	<i>Purchase of Litter Trailer and Clean-up Events</i>
<b>Location of SEP:</b>	Tarrant 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 purchase a litter trailer for public use in local clean-up efforts. The trailer shall be outfitted with supplies needed to collect litter including, but not limited to, trash bags, pickup sticks, first aid kits, safety vests, safety cones, water jugs, and gloves (the “Project”). After the purchase of the litter trailer and supplies, Respondent shall perform a minimum of seven (7) clean-up events throughout the City within one year. The Project shall also be available for neighborhoods, volunteers, homeowners associations, churches, and other organizations, not under an enforcement action with the TCEQ, to conduct clean ups within the City. Any advertisement, including publication related to the SEP, must include the enforcement statement as stated in Section 6, Publicity, below.

Respondent shall use the SEP Offset Amount only for the direct cost of implementing the Project, including supplies, materials, and equipment rentals, as listed in Subsection C. Minimum Expenditure, Estimated Cost Schedule, below. No portion of the SEP Offset Amount shall be spent on administrative costs including, but not limited to, operating costs, reporting expenses, handling of expenses, project coordination, liability, or equipment breakdowns. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent’s signature affixed to the attached Agreed Order certifies that Respondent has no prior commitment to perform this Project and that the SEP is being performed solely as part of the terms of settlement in this enforcement action.

**B. Environmental Benefit**

The SEP will provide a discernible environmental benefit by helping to prevent the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.

C. Minimum Expenditure

Respondent spend at least the SEP Offset Amount to complete the project described in Section 1, 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.

**Estimated Cost Schedule**

<b>Item</b>	<b>Quantity</b>	<b>Cost</b>	<b>Units</b>	<b>Total</b>
Trailer	1	\$4,900	each	\$4,900
Gloves	100	2.00	each	\$200
Pick-up sticks	100	\$15	each	\$1,500
Public Notification of Event	7	\$150	each	\$1,050
Water cooler	3	\$20	each	\$60
Table and chairs	1	\$250	each	\$250
Wrap trailer	1	\$1,500	each	\$1,500
First Aid Kit	1	\$50	each	\$50
Trailer Awning	1	\$800	each	\$800
Safety barricades	6	\$155	each	\$930
Safety cones	10	\$20	each	\$200
Generator	1	\$400	each	\$400
<b>Total</b>				<b>\$11,840.00</b>

**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 performed to-date to implement the Project. Within 90 days of the effective date of this Agreed Order, Respondent shall submit a report detailing the progress made and all actions completed on the Project during the previous 60-day period and setting forth a schedule for achieving completion of the Project within the 365-day time-frame set forth in Section 2, Performance Schedule, above. Thereafter, Respondent shall

submit progress reports to the TCEQ in 90-day increments containing detailed information on all actions completed on the Project to-date as set forth in the Reporting Schedule table below:

<b>Days from Effective Order Date</b>	<b>Information Required</b>
30	Notice of Commencement describing actions taken to begin project
90	Actions completed during previous 60-day period
180	Actions completed during previous 90-day period
270	Actions completed during previous 90-day period
365	Notice of SEP completion

**B. Final Report**

Within 365 days after the effective date of the Agreed Order, or within 60 days after completion of SEP, whichever is earlier, Respondent shall submit a Final Report to the TCEQ, which shall include the following:

1. A summary total of the amount of costs incurred;
2. An itemized list of expenditures and costs incurred;
3. Copies of paid receipts, cleared checks, invoices, and other verifying documentation for each expense corresponding to the itemized list in paragraph 3.B.2., above;
4. Copies of proof of advertisement of each event (the advertisement must include the statement that the SEP was performed as a result of a TCEQ enforcement action);
5. Maps showing specific locations of the cleanup sites;
6. Photographs of each collection event showing the collected items;
7. Manifests sufficient to show proof of proper disposal and/or recycling of the collected items. Documentation must be provided to show proof of proper disposal or recycling of the collected materials;
8. A count on the type of items collected; i.e. number of tires, pounds of trash and debris, etc.;
9. A notarized/certified statement of the quantifiable environmental benefits. The Respondent must quantify the environmental benefit of each collection event; and
10. Any additional information the Respondent believes will, or that is requested by TCEQ to demonstrate compliance with this Attachment A.

C. Address

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

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

**4. Additional Information and Access**

Respondent shall provide additional information as requested by TCEQ staff, and shall allow access to all records related to 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, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 through 4, above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount as set forth in the attached Agreed Order.

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 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

**6. Publicity**

Any public statements concerning this 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.

**7. Clean Texas Program**

Respondent shall not include this Project 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 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

DATES	Assigned	7-Nov-2011	Screening	21-Nov-2011	EPA Due	
	PCW	21-Nov-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	City of Arlington		
Reg. Ent. Ref. No.	RN104950134		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	43004	No. of Violations	1	
Docket No.	2011-2258-WQ-E	Order Type	Findings	
Media Program(s)	Water Quality	Government/Non-Profit	Yes	
Multi-Media		Enf. Coordinator	Jeremy Escobar	
		EC's Team	Enforcement Team 3	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$7,500</b>
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<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>	Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.	
<b>Compliance History</b>	75.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b> \$5,625

Notes: Enhancement for three agreed orders without denial of liability.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$1,875</b>
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
Total EB Amounts	\$38	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$45,039		

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$11,250</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
Reduces or enhances the Final Subtotal by the indicated percentage.			

Notes:

<b>Final Penalty Amount</b>	<b>\$11,250</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$11,250</b>
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)			

Notes: No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	<b>\$11,250</b>
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Screening Date 21-Nov-2011

Docket No. 2011-2258-WQ-E

PCW

Respondent City of Arlington

Policy Revision 3 (September 2011)

Case ID No. 43004

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104950134

Media [Statute] Water Quality

Enf. Coordinator Jeremy Escobar

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	3	75%
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)** 75%

#### >> 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 three agreed orders without denial of liability.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 75%

#### >> Final Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** 75%

Screening Date 21-Nov-2011

Docket No. 2011-2258-WQ-E

PCW

Respondent City of Arlington

Policy Revision 3 (September 2011)

Case ID No. 43004

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104950134

Media [Statute] Water Quality

Enf. Coordinator Jeremy Escobar

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121

Violation Description Failed to prevent an unauthorized discharge of wastewater from the collection system into water in the state. Specifically, on September 12 and September 13, 2011, sewer line blockages resulted in the overflow of approximately 13,000 gallons of wastewater from the manhole located behind Forestwood Drive and River Rock Court near the Riverside Golf Course killing approximately 350 fish in the surrounding irrigation pond.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (30.0%). Includes 'OR' label.

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and 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 the violation.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 1 Number of violation days 2

Table for frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event. 'x' is marked in the single event row.

Violation Base Penalty \$7,500

One single event is recommended, from the date of the first discharge (September 12, 2011) to the date the initial clean-up of the discharges was completed (September 13, 2011).

Good Faith Efforts to Comply

25.0% Reduction \$1,875

Table for Good Faith Efforts: Extraordinary, Ordinary (marked with x), N/A.

Notes The Respondent achieved compliance by September 22, 2011.

Violation Subtotal \$5,625

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$38

Violation Final Penalty Total \$11,250

This violation Final Assessed Penalty (adjusted for limits) \$11,250

# Economic Benefit Worksheet

**Respondent** City of Arlington  
**Case ID No.** 43004  
**Reg. Ent. Reference No.** RN104950134  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				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	\$19,309	12-Sep-2011	13-Sep-2011	0.00	\$3	n/a	\$3
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$25,730	12-Sep-2011	22-Sep-2011	0.03	\$35	n/a	\$35

#### Notes for DELAYED costs

Cost provided by the Respondent to locate and remove the blockages using television and jet-vac trucks, to clean the affected area and to remove and properly dispose of the dead fish (\$19,309); the cost to aerate the pond, and clean and root saw sewer main (\$25,730). The date required is the date of the first discharge. The final dates are the date the clean-up of the discharge was completed and the date the ponds were aerated to increase the dissolved oxygen and lower the ammonia levels.

### 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

\$45,039

**TOTAL**

\$38

**Attachment A**  
**Docket Number: 2011-2258-WQ-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	City of Arlington
<b>Penalty Amount:</b>	Eleven Thousand Two Hundred Fifty Dollars (\$11,250)
<b>SEP Offset Amount:</b>	Eleven Thousand Two Hundred Fifty Dollars (\$11,250)
<b>Type of SEP:</b>	Custom
<b>Project Name:</b>	<i>Purchase of Litter Trailer and Clean-up Events</i>
<b>Location of SEP:</b>	Tarrant 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 purchase a litter trailer for public use in local clean-up efforts. The trailer shall be outfitted with supplies needed to collect litter including, but not limited to, trash bags, pickup sticks, first aid kits, safety vests, safety cones, water jugs, and gloves (the “Project”). After the purchase of the litter trailer and supplies, Respondent shall perform a minimum of seven (7) clean-up events throughout the City within one year. The Project shall also be available for neighborhoods, volunteers, homeowners associations, churches, and other organizations, not under an enforcement action with the TCEQ, to conduct clean ups within the City. Any advertisement, including publication related to the SEP, must include the enforcement statement as stated in Section 6, Publicity, below.

Respondent shall use the SEP Offset Amount only for the direct cost of implementing the Project, including supplies, materials, and equipment rentals, as listed in Subsection C. Minimum Expenditure, Estimated Cost Schedule, below. No portion of the SEP Offset Amount shall be spent on administrative costs including, but not limited to, operating costs, reporting expenses, handling of expenses, project coordination, liability, or equipment breakdowns. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent’s signature affixed to the attached Agreed Order certifies that Respondent has no prior commitment to perform this Project and that the SEP is being performed solely as part of the terms of settlement in this enforcement action.

**B. Environmental Benefit**

The SEP will provide a discernible environmental benefit by helping to prevent the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.

C. Minimum Expenditure

Respondent spend at least the SEP Offset Amount to complete the project described in Section 1, 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.

**Estimated Cost Schedule**

<b>Item</b>	<b>Quantity</b>	<b>Cost</b>	<b>Units</b>	<b>Total</b>
Trailer	1	\$4,900	each	\$4,900
Gloves	100	2.00	each	\$200
Pick-up sticks	100	\$15	each	\$1,500
Public Notification of Event	7	\$150	each	\$1,050
Water cooler	3	\$20	each	\$60
Table and chairs	1	\$250	each	\$250
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Trailer Awning	1	\$800	each	\$800
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Safety cones	10	\$20	each	\$200
Generator	1	\$400	each	\$400
<b>Total</b>				<b>\$11,840.00</b>

**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 performed to-date to implement the Project. Within 90 days of the effective date of this Agreed Order, Respondent shall submit a report detailing the progress made and all actions completed on the Project during the previous 60-day period and setting forth a schedule for achieving completion of the Project within the 365-day time-frame set forth in Section 2, Performance Schedule, above. Thereafter, Respondent shall

submit progress reports to the TCEQ in 90-day increments containing detailed information on all actions completed on the Project to-date as set forth in the Reporting Schedule table below:

<b>Days from Effective Order Date</b>	<b>Information Required</b>
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365	Notice of SEP completion

**B. Final Report**

Within 365 days after the effective date of the Agreed Order, or within 60 days after completion of SEP, whichever is earlier, Respondent shall submit a Final Report to the TCEQ, which shall include the following:

1. A summary total of the amount of costs incurred;
2. An itemized list of expenditures and costs incurred;
3. Copies of paid receipts, cleared checks, invoices, and other verifying documentation for each expense corresponding to the itemized list in paragraph 3.B.2., above;
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5. Maps showing specific locations of the cleanup sites;
6. Photographs of each collection event showing the collected items;
7. Manifests sufficient to show proof of proper disposal and/or recycling of the collected items. Documentation must be provided to show proof of proper disposal or recycling of the collected materials;
8. A count on the type of items collected; i.e. number of tires, pounds of trash and debris, etc.;
9. A notarized/certified statement of the quantifiable environmental benefits. The Respondent must quantify the environmental benefit of each collection event; and
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C. Address

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

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Attention: SEP Coordinator, MC 175  
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**4. Additional Information and Access**

Respondent shall provide additional information as requested by TCEQ staff, and shall allow access to all records related to 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, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 through 4, above, the Executive Director (“ED”) may require immediate payment of all or part of the SEP Offset Amount as set forth in the attached Agreed Order.

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 reimbursement of a SEP, shall make the check payable to “Texas Commission on Environmental Quality,” and shall mail it to:

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**6. Publicity**

Any public statements concerning this 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.

**7. Clean Texas Program**

Respondent shall not include this Project 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 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.



# Compliance History

Customer/Respondent/Owner-Operator: CN600131791 City of Arlington Classification: AVERAGE Rating: 5.18

Regulated Entity: RN104950134 CITY OF ARLINGTON COLLECTION SYSTEM Classification: POOR Site Rating: 125.00

ID Number(s): UTILITIES REGISTRATION P0034

Location: located behind Forestwood Drive and River Rock Court near the Riverside Golf Course in Arlington, Tarrant County, Texas

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: December 07, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: November 21, 2006 to November 21, 2011

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

Name: Jeremy Escobar Phone: 825-3422

## 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: 9/1/2011 Repeat Violator: YES

### 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: 08/31/2007 ADMINORDER 2006-0720-WQ-E
  - Classification: Major
  - Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
  - Description: Failure to prevent the unauthorized discharge of wastewater.
  - Classification: Major
  - Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
  - Description: Failure to prevent an unauthorized discharge of wastewater.
  - Classification: Major
  - Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
  - Description: Failure to prevent an unauthorized discharge of wastewater.
  - Effective Date: 08/29/2008 ADMINORDER 2007-1776-WQ-E
  - Classification: Major
  - Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
  - Description: Failure to prevent an unauthorized discharge.
  - Effective Date: 06/20/2011 ADMINORDER 2010-1625-WQ-E
  - Classification: Major
  - Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
  - Description: Failure to prevent an unauthorized discharge of wastewater into or adjacent to water of the state.
- 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.)

2	02/08/2007	(609811)
3	08/21/2008	(700646)
4	09/24/2009	(777090)
5	08/26/2010	(849797)
6	11/03/2011	(964494)

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

N/A

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF ARLINGTON  
RN104950134**

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

**AGREED ORDER  
DOCKET NO. 2011-2258-WQ-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 Arlington (“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 domestic wastewater collection system, with an associated manhole located behind Forestwood Drive and River Rock Court near the Riverside Golf Course in Arlington, Tarrant County, Texas (the “Site”).

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 September 12, 2011, TCEQ staff documented on September 12 and September 13, 2011, sewer line blockages resulted in the overflow of approximately 13,000 gallons of wastewater from the manhole located behind Forestwood Drive and River Rock Court near the Riverside Golf Course killing approximately 350 fish in the surrounding irrigation pond.
4. The Respondent received notice of the violations on November 8, 2011.
5. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:
  - a. On September 12 and 13, 2011, located and removed the sewer line blockages using television and jet-vac trucks, deployed two aerators into the irrigation pond to increase the dissolved oxygen and lower the ammonia levels and removed and disposed of the dead fish; and
  - b. On September 22, 2011, completed the aeration of the pond.

## **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 an unauthorized discharge of wastewater from the collection system into water in the State, in violation of TEX. WATER CODE § 26.121.
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 Eleven Thousand Two Hundred Fifty Dollars (\$11,250) 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. Eleven Thousand Two Hundred Fifty Dollars (\$11,250) 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 Eleven Thousand Two Hundred Fifty Dollars (\$11,250) 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 Arlington, Docket No. 2011-2258-WQ-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, Eleven Thousand Two Hundred Fifty Dollars (\$11,250) 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 Site 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

10/26/12  
Date

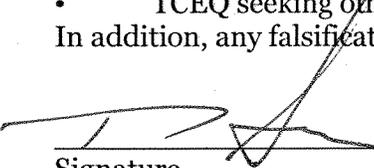
I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Arlington. I am authorized to agree to the attached Agreed Order on behalf of the City of Arlington, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting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

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

6/18/12  
Date

Terry Benton  
Name (Printed or typed)  
Authorized Representative of  
City of Arlington

Interim Director of Water Utilities  
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: 2011-2258-WQ-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	City of Arlington
<b>Penalty Amount:</b>	Eleven Thousand Two Hundred Fifty Dollars (\$11,250)
<b>SEP Offset Amount:</b>	Eleven Thousand Two Hundred Fifty Dollars (\$11,250)
<b>Type of SEP:</b>	Custom
<b>Project Name:</b>	<i>Purchase of Litter Trailer and Clean-up Events</i>
<b>Location of SEP:</b>	Tarrant 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 purchase a litter trailer for public use in local clean-up efforts. The trailer shall be outfitted with supplies needed to collect litter including, but not limited to, trash bags, pickup sticks, first aid kits, safety vests, safety cones, water jugs, and gloves (the “Project”). After the purchase of the litter trailer and supplies, Respondent shall perform a minimum of seven (7) clean-up events throughout the City within one year. The Project shall also be available for neighborhoods, volunteers, homeowners associations, churches, and other organizations, not under an enforcement action with the TCEQ, to conduct clean ups within the City. Any advertisement, including publication related to the SEP, must include the enforcement statement as stated in Section 6, Publicity, below.

Respondent shall use the SEP Offset Amount only for the direct cost of implementing the Project, including supplies, materials, and equipment rentals, as listed in Subsection C. Minimum Expenditure, Estimated Cost Schedule, below. No portion of the SEP Offset Amount shall be spent on administrative costs including, but not limited to, operating costs, reporting expenses, handling of expenses, project coordination, liability, or equipment breakdowns. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent’s signature affixed to the attached Agreed Order certifies that Respondent has no prior commitment to perform this Project and that the SEP is being performed solely as part of the terms of settlement in this enforcement action.

B. Environmental Benefit

The SEP will provide a discernible environmental benefit by helping to prevent the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.

C. Minimum Expenditure

Respondent spend at least the SEP Offset Amount to complete the project described in Section 1, 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.

**Estimated Cost Schedule**

Item	Quantity	Cost	Units	Total
Trailer	1	\$4,900	each	\$4,900
Gloves	100	2.00	each	\$200
Pick-up sticks	100	\$15	each	\$1,500
Public Notification of Event	7	\$150	each	\$1,050
Water cooler	3	\$20	each	\$60
Table and chairs	1	\$250	each	\$250
Wrap trailer	1	\$1,500	each	\$1,500
First Aid Kit	1	\$50	each	\$50
Trailer Awning	1	\$800	each	\$800
Safety barricades	6	\$155	each	\$930
Safety cones	10	\$20	each	\$200
Generator	1	\$400	each	\$400
<b>Total</b>				<b>\$11,840.00</b>

**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 performed to-date to implement the Project. Within 90 days of the effective date of this Agreed Order, Respondent shall submit a report detailing the progress made and all actions completed on the Project during the previous 60-day period and setting forth a schedule for achieving completion of the Project within the 365-day time-frame set forth in Section 2, Performance Schedule, above. Thereafter, Respondent shall

submit progress reports to the TCEQ in 90-day increments containing detailed information on all actions completed on the Project to-date as set forth in the Reporting Schedule table below:

<b>Days from Effective Order Date</b>	<b>Information Required</b>
30	Notice of Commencement describing actions taken to begin project
90	Actions completed during previous 60-day period
180	Actions completed during previous 90-day period
270	Actions completed during previous 90-day period
365	Notice of SEP completion

**B. Final Report**

Within 365 days after the effective date of the Agreed Order, or within 60 days after completion of SEP, whichever is earlier, Respondent shall submit a Final Report to the TCEQ, which shall include the following:

1. A summary total of the amount of costs incurred;
2. An itemized list of expenditures and costs incurred;
3. Copies of paid receipts, cleared checks, invoices, and other verifying documentation for each expense corresponding to the itemized list in paragraph 3.B.2., above;
4. Copies of proof of advertisement of each event (the advertisement must include the statement that the SEP was performed as a result of a TCEQ enforcement action);
5. Maps showing specific locations of the cleanup sites;
6. Photographs of each collection event showing the collected items;
7. Manifests sufficient to show proof of proper disposal and/or recycling of the collected items. Documentation must be provided to show proof of proper disposal or recycling of the collected materials;
8. A count on the type of items collected; i.e. number of tires, pounds of trash and debris, etc.;
9. A notarized/certified statement of the quantifiable environmental benefits. The Respondent must quantify the environmental benefit of each collection event; and
10. Any additional information the Respondent believes will, or that is requested by TCEQ to demonstrate compliance with this Attachment A.

C. Address

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

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

**4. Additional Information and Access**

Respondent shall provide additional information as requested by TCEQ staff, and shall allow access to all records related to 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, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 through 4, above, the Executive Director (“ED”) may require immediate payment of all or part of the SEP Offset Amount as set forth in the attached Agreed Order.

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 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

**6. Publicity**

Any public statements concerning this 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.

**7. Clean Texas Program**

Respondent shall not include this Project 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 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.