

Executive Summary – Enforcement Matter – Case No. 40551

City of Tyler

RN101611150 and RN102916459

Docket No. 2010-1697-MWD-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Fish Kill

Media:

MWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

Westside System, 14939 County Road 46, approximately 20,000 feet west-northwest of the intersection of State Highway Loop 323 and United States Highway 69 and approximately seven miles northwest of the Smith County Courthouse, Tyler, Smith County; and

Southside System, 1.5 miles northwest of the intersection of United States Highway 69 and Farm-to-Market Road 2813 and approximately 3.4 miles south-southwest of the intersection of State Loop 323 and United States Highway 69, Smith County.

Type of Operation:

Wastewater treatment plant

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: July 15, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$41,400

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: \$41,400

Name of SEP: Repair of Diversion Conduit Outlet Pipe on Whitehouse Dam

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: No

Statutory Limit Adjustment (Southside System): N/A

Statutory Limit Adjustment (Westside System): N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 40551

City of Tyler

RN101611150 and RN102916459

Docket No. 2010-1697-MWD-E

Investigation Information

Complaint Date(s): October 28, 2010

Complaint Information: Alleging an unauthorized discharge into West Mud Creek resulting in dead fish.

Date(s) of Investigation: June 28, 2010 and October 28, 2010

Date(s) of NOE(s): September 3, 2010 and November 22, 2010

Violation Information

1. Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), Texas Pollutant Discharge Elimination System (“TPDES”) Permit No. WQ0010653001, Permit Conditions No. 2.g.].

2. Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), TPDES Permit No. WQ0010653002, Permit Conditions No. 2.g.].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Westside System:

a. On September 27, 2009, at the sewer main behind 1802 Pinecrest, made repairs to eight inch sewer main and disinfected area and flushed creek with 500,000 gallons of water.

b. On October 21, 2009, at the collection line and manhole located south of Bellwood Road between Loop 323 and Whiteside Drive, made repairs to manhole and disinfected and flushed area.

c. On October 23, 2009, at the third manhole east of silt dam on Lake Bellwood, cleared blockage and disinfected area.

d. On November 9, 2009, at the manhole located at Pecan Drive and Green Lane, cleared blockage and disinfected area.

e. On November 12, 2009, at the cleanout located at 100 block of North Forest Avenue, cleared blockage and flushed the creek.

f. On November 20, 2009, at the manhole located at E. 5th Street and 323 Loop SW, cleared blockage and disinfected area.

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Docket No. 2010-1697-MWD-E

g. On March 4, 2010, at the manhole behind 858 SE loop 323, cleared blockage, vacuumed out debris, and disinfected area.

h. On April 9, 2010, at the manhole north of Autumn Leaves near 3100 WNW Loop 323, cabled and vacuumed line, disinfected area, and flushed the creek.

i. On April 19, 2010, 1,000 feet east of North Broadway on West 32nd Street, hired a contractor to realign 18 inch sewer main and install new piers to support the sewer line.

j. On May 7, 2010, at the third manhole east of the dead end of Club Lake Street, cabled line, disinfected area, and flushed the affected area.

k. On May 8, 2010, at the manhole in the 700 block of West 32nd Street, cabled line, disinfected area, and flushed the affected area.

l. On June 10, 2010, at the Green Briar lift station, installed temporary pumps to pump water back into the Westside system.

m. On June 11, 2010, at 3369 Cascades Blvd., made temporary repairs by plugging both inflow and outflow pipes and setup bypass pumping to next downstream manhole about 450 feet away to stop the discharge until permanent repairs could be commenced on June 17, 2010.

n. On June 14, 2010, below the spillway of Bellwood Lake, replaced the 80-foot damaged section of the force main.

o. On June 14, 2010, at the pasture near 10886 Green Briar Rd., disinfected affected area and replaced pumps at Greenbriar lift station.

p. On June 17, 2010, at 3369 Cascades Blvd., made temporary repairs to contain discharge and return to Westside System.

q. By July 14, 2010, at 3369 Cascades Blvd., completed permanent repairs by rebuilding the silt dam, the two manholes, and approximately 50 feet of 10-inch sewer main.

The Executive Director recognizes that the Respondent, by October 29, 2010, at the Southside System:

a. Dammed the creek upstream and downstream of the leaking sewer main to contain the sludge;

b. Bypassed and repaired the leaking section of the sewer main; and

c. Cleaned and disinfected the affected area and returned the discharge to the Southside System.

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Technical Requirements:

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

Litigation Information

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

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Steve Villatoro, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4930; Debra Barber, Enforcement Division, MC 219, (512) 239-0412
TCEQ SEP Coordinator: Sharon Blue, SEP Coordinator, Litigation Division, MC 175, (512) 239-2223
Respondent: Gregory M. Morgan Acting City Manager, P.O. Box 2039, Tyler, Texas 75710
The Honorable Barbara Bass, Mayor, City of Tyler, P.O. Box 2039, Tyler, Texas 75710
Respondent's Attorney: N/A

Attachment A
Docket Number: 2010-1697-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Tyler
Penalty Amount:	Forty-One Thousand Four Hundred Dollars (\$41,400)
SEP Offset Amount:	Forty-One Thousand Four Hundred Dollars (\$41,400)
Type of SEP:	Custom
Project Name:	Repair of Diversion Conduit Outlet Pipe on Whitehouse Dam
Location of SEP:	Smith 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 repair the diversion conduit outlet pipe located at 32°12'35.55"N, 95°10'22.38"W on Whitehouse Dam, a large-sized, high-hazard dam, in Smith County, Texas (the “Project”). The diversion conduit outlet pipe developed a large boil allowing sedimentation to be discharged into Prairie Creek.

Respondent shall use its own funds to provide the geotechnical and engineering work necessary to locate the source and stop the leakage/seepage occurring at the diversion conduit outlet at the dam. The SEP Offset Amount will be used to repair the diversion conduit outlet pipe. The Project will be implemented in three phases: preliminary engineering, design and construction. Respondent shall use its own funds to hire a licensed Texas Professional Engineer (LTPE) to perform the preliminary engineering study to evaluate the problem in concert with a geotechnical investigation of the Project area. Based upon the results of the preliminary work, the LTPE will perform the design work and develop plans, specifications, bidding, and contract documents, after which the Respondent will procure a construction contractor to perform the required repair work on the diversion conduit outlet pipe in the dam within the Project area. Specifically, the SEP Offset Amount will be used for the contractor costs of construction and for materials and equipment necessary to repair the diversion conduit outlet pipe. No SEP Offset Amount will be used for Respondent’s labor, engineering, or design phases of the Project.

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

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

B. Environmental Benefit

The SEP will reduce the amount of silt flowing into Prairie Creek downstream of the Whitehouse Dam and will help prevent future dam failure.

C. Minimum Expenditure

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

2. Performance Schedule

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

3. Records and Reporting

A. Progress Report

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

Table 2: Reporting Schedule

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

B. Final Report

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

1. Itemized list of expenditures and total costs of the project;
2. Copies of invoices and paid receipts;
3. Copies of checks or payment records for matching invoices and receipts;
4. Copy of engineering plans;
5. Copy of bidding invitation that includes the enforcement statement in Section 6, below;
6. Dated photographs of work being performed and of completed work;
7. Copy of As-builts or record drawings after work has been completed;
8. A notarized/certified statement of quantifiable environmental benefit; and
9. Any additional information that will demonstrate compliance with this Attachment A.

Copies of receipts, checks with associated invoices, and other documentation verifying appropriate expenditures and the completion of the project must be submitted with the final report.

C. Address

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

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

4. Additional Information and Access

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

5. Failure to Fully Perform

If Respondent does not perform its obligations under this Attachment A in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

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

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

6. **Publicity**

Any public statements concerning this SEP made by or on behalf of Respondent, must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

7. **Clean Texas Program**

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

8. **Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	7-Sep-2010	Screening	21-Sep-2010	EPA Due	
	PCW	24-Sep-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Tyler - Westside System
Reg. Ent. Ref. No.	RN101611150
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	2
Enf./Case ID No.	40551	Order Type	Findings
Docket No.	2010-1697-MWD-E	Government/Non-Profit	Yes
Media Program(s)	Water Quality	Enf. Coordinator	Steve Villatoro
Multi-Media		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

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

Notes

Culpability Enhancement **Subtotal 4**

Notes

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

PAYABLE PENALTY

Screening Date 21-Sep-2010

Docket No. 2010-1697-MWD-E

PCW

Respondent City of Tyler - Westside System

Policy Revision 2 (September 2002)

Case ID No. 40551

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101611150

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

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>)	5	25%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<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) 29%

>> **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 two months of self-reported effluent violations, three NOVs with same/similar violations, and two NOVs with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 29%

Screening Date 21-Sep-2010

Docket No. 2010-1697-MWD-E

PCW

Respondent City of Tyler - Westside System

Policy Revision 2 (September 2002)

Case ID No. 40551

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101611150

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010653001, Permit Conditions No. 2.g.

Violation Description Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, as documented during an investigation conducted on June 28, 2010. Specifically, a review of the System's records indicated that ten unauthorized discharges of wastewater were reported from September 2009 to June 2010, as shown in the attached table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	10%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment has been exposed to insignificant amounts of pollutants a result of this violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 10 Number of violation days 220

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$10,000

Ten quarterly events are recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$2,500

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

Notes The Respondent achieved compliance by June 17, 2010.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5,406

Violation Final Penalty Total \$10,400

This violation Final Assessed Penalty (adjusted for limits) \$10,400

Economic Benefit Worksheet

Respondent City of Tyler - Westside System
Case ID No. 40551
Reg. Ent. Reference No. RN101611150
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	\$82,059	27-Sep-2009	17-Jun-2010	0.72	\$197	\$3,942	\$4,139
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	\$35,168	27-Sep-2009	17-Jun-2010	0.72	\$1,267	n/a	\$1,267
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Actual costs to replace damaged equipment, clear out blockages in the collection system, and to clean and disinfect affected areas. The date required is the date of the first discharge. The 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

\$117,227

TOTAL

\$5,406

Screening Date 21-Sep-2010

Docket No. 2010-1697-MWD-E

PCW

Respondent City of Tyler - Westside System

Policy Revision 2 (September 2002)

Case ID No. 40551

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101611150

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

Violation Number 2

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010653001.

Violation Description

Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, as documented during an investigation conducted on June 28, 2010. Specifically, a review of the System's records indicated that six unauthorized discharges of wastewater were reported from September 2009 to June 2010, as shown in the attached table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants a result of this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 6

28 Number of violation days

mark only one with an x

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$15,000

Six monthly events are recommended for the discharges on September 27, 2009, October 21, 2009, October 23, 2009, June 10, 2010, and June 11, 2010.

Good Faith Efforts to Comply

25.0% Reduction

\$3,750

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

Notes The Respondent achieved compliance by June 17, 2010.

Violation Subtotal \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$15,600

This violation Final Assessed Penalty (adjusted for limits) \$15,600

Economic Benefit Worksheet

Respondent City of Tyler - Westside System
Case ID No. 40551
Reg. Ent. Reference No. RN101611150
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See economic benefit for violation no. 1.

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 \$0

TOTAL \$0



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	29-Nov-2010	Screening	10-Dec-2010	EPA Due	
	PCW	13-Dec-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Tyler - Southside System
Reg. Ent. Ref. No.	RN102916459
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	1
Enf./Case ID No.	40551	Order Type	Findings
Docket No.	2010-1697-MWD-E	Government/Non-Profit	Yes
Media Program(s)	Water Quality	Enf. Coordinator	Steve Villatoro
Multi-Media		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

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

Notes: Enhancement for nine months of self-reported effluent violations, two NOVs with same/similar violations, two NOVs with dissimilar violations, and one order with denial.

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

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 10-Dec-2010

Docket No. 2010-1697-MWD-E

PCW

Respondent City of Tyler - Southside System

Policy Revision 2 (September 2002)

Case ID No. 40551

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102916459

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

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>)	11	55%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<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) 79%

>> **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 nine months of self-reported effluent violations, two NOVs with same/similar violations, two NOVs with dissimilar violations, and one order with denial.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 79%

Screening Date 10-Dec-2010

Docket No. 2010-1697-MWD-E

PCW

Respondent City of Tyler - Southside System

Policy Revision 2 (September 2002)

Case ID No. 40551

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102916459

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010653002, Permit Conditions No. 2.d.

Violation Description

Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, as documented during an investigation conducted on October 28, 2010. Specifically, a leaking 18 inch sewer main, located behind 3613 South Broadway, discharged approximately 36,000 gallons of untreated wastewater into West Mud Creek, resulting in an estimated 250 dead fish.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants a result of this violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 2

2 Number of violation days

daily	x
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$10,000

Two daily events recommended from the date the discharge started (October 27, 2010) to the compliance date (October 29, 2010).

Good Faith Efforts to Comply

25.0% Reduction

\$2,500

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

Notes: The Respondent achieved compliance by October 29, 2010.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$15,400

This violation Final Assessed Penalty (adjusted for limits) \$15,400

Economic Benefit Worksheet

Respondent City of Tyler - Southside System
Case ID No. 40551
Reg. Ent. Reference No. RN102916459
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	\$7,500	27-Oct-2010	29-Oct-2010	0.01	\$2	n/a	\$2
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to repair leaking pipe, contain the discharge, and clean and disinfect the affected area.
 The date required is the initial date of the discharge. The 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

\$7,500

TOTAL

\$2

19 01/29/2007 (538226)
 20 02/14/2007 (581074)
 21 03/19/2007 (581076)
 22 05/23/2007 (581079)
 23 05/23/2007 (581082)
 24 06/22/2007 (581085)
 25 07/19/2007 (581088)
 26 08/08/2007 (571438)
 27 08/16/2007 (608096)
 28 09/14/2007 (608097)
 29 10/17/2007 (608098)
 30 06/23/2008 (683746)
 31 10/21/2008 (705875)
 32 12/03/2008 (708034)
 33 02/25/2010 (792717)
 34 03/31/2010 (795234)
 35 05/14/2010 (832547)
 36 06/08/2010 (826051)
 37 06/14/2010 (846789)
 38 06/14/2010 (861309)

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

Date: 09/30/2006 (581094)
 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: 10/17/2006 (514547)
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 317 317.3(e)(1)
 Description: Failure to prevent the discharge of wastes during a power failure.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(9)
 Description: Failure to notify the TCEQ of the sanitary sewer overflow from the manhole located north of the Greenbriar Road lift station on September 21, 2006.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(4)
 30 TAC Chapter 305, SubChapter F 305.125(5)
 TWC Chapter 26 26.121
 TWC Chapter 26 26.121(a)
 TWC Chapter 26 26.121(a)(1)
 TWC Chapter 26 26.121(a)(2)
 TWC Chapter 26 26.121(a)(3)
 TWC Chapter 26 26.121(b)
 TWC Chapter 26 26.121(c)
 TWC Chapter 26 26.121(d)
 TWC Chapter 26 26.121(e)
 Description: Failure to clean and disinfect the area effected by the sanitary sewer overflow from the manhole located north of the Greenbriar Road lift station on September 21, 2006.
 Date: 07/31/2007 (608096) CN600335657
 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: 06/25/2008 (683746) CN600335657
 Self Report? NO Classification: Major
 Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
 Description: Failure to obtain permit coverage for storm water discharges from August 14, 2006 through April 17, 2008.
 Date: 10/24/2008 (705875) CN600335657
 Self Report? NO Classification: Moderate
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)

Description: Failure to properly prevent an unauthorized discharge as specified in the Texas Water Code §26.121(a). The investigators observed raw sewage was deposited on the ground from a manhole on Greenbriar Rd. The water that had pooled on the complainant's property was grey in color and had an odor associated with raw sewage. According to the Texas Water Code §26.121(a) "Except as authorized by a rule, permit, or order issued by the commission, no person may: (1) discharge sewage, municipal waste

Date 02/26/2010 (792717) CN600335657
Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
TPDES Industrial Storm Water TXR050000 PERMIT

Description: Failure to conduct an investigation and complete a certification for non-storm water discharges.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
TPDES Industrial Storm Water TXR050000 PERMIT

Description: Failure to conduct quarterly periodic inspections.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
TPDES Industrial Storm Water TXR050000 PERMIT

Description: Failure to conduct annual comprehensive site compliance evaluations.

Date 04/08/2010 (795234) CN600335657
Self Report? NO Classification Moderate

Citation: TWC Chapter 26 26.121

Description: Failure to prevent unauthorized discharge into waters of the state.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
30 TAC Chapter 317 317.4(g)

Description: Failure to maintain building structures.

Self Report? NO Classification Minor

Citation: 30 TAC Chapter 317 317.7(d)

Description: Failure to have non-potable water signs posted on all non-potable water sources.

Self Report? NO Classification Moderate

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

Description: Failure to prevent and adequately mitigate unauthorized discharges.

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

Compliance History

Customer/Respondent/Owner-Operator: CN600335657 City of Tyler Classification: AVERAGE Rating: 2.37

Regulated Entity: RN102916459 CITY OF TYLER SOUTHSIDE PLANT Classification: AVERAGE Site Rating: 1.87

ID Number(s): WASTEWATER PERMIT WQ0010653002
 WASTEWATER EPA ID TX0047988
 PRETREATMENT PERMIT WQ0010653002
 PRETREATMENT EPA ID TX0047988000
 WASTEWATER LICENSING LICENSE WQ0010653002
 STORMWATER PERMIT TXR05Y195

Location: 1.5 miles northwest of the intersection of United States Highway 69 and Farm-to-Market Road 2813 and approximately 3.4 miles south-southwest of the intersection of State Loop 323 and United States Highway 69 in Smith County

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: December 10, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 10, 2005 to December 10, 2010

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

Name: Steve Villatoro Phone: (512) 239-4930

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
- Effective Date: 10/06/2008 ADMINORDER 2008-0937-WQ-E
 Classification: Major
 Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
 Description: Field Citation - Failure to obtain a multi-sector industrial storm water permit.
- 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 | 12/12/2005 | (440123) |
| 2 | 03/23/2006 | (456219) |
| 3 | 02/21/2006 | (581046) |
| 4 | 02/14/2007 | (581047) |
| 5 | 03/14/2006 | (581048) |
| 6 | 03/19/2007 | (581049) |
| 7 | 04/20/2006 | (581051) |
| 8 | 04/23/2007 | (581052) |
| 9 | 05/17/2006 | (581054) |
| 10 | 05/23/2007 | (581055) |
| 11 | 06/12/2006 | (581057) |
| 12 | 06/22/2007 | (581058) |
| 13 | 06/12/2006 | (581060) |
| 14 | 07/19/2007 | (581061) |
| 15 | 09/05/2006 | (581063) |
| 16 | 09/18/2006 | (581065) |
| 17 | 11/13/2006 | (581067) |
| 18 | 11/13/2006 | (581069) |
| 19 | 12/19/2005 | (581070) |
| 20 | 12/18/2006 | (581071) |

21	08/23/2007	(608093)
22	09/14/2007	(608094)
23	10/17/2007	(608095)
24	02/29/2008	(618553)
25	05/19/2008	(640362)
26	05/05/2008	(654438)
27	08/10/2009	(764069)
28	09/01/2009	(764601)
29	03/25/2010	(795080)
30	02/14/2008	(809326)
31	02/17/2009	(809327)
32	02/22/2010	(809328)
33	03/17/2009	(809329)
34	03/14/2008	(809330)
35	04/16/2008	(809331)
36	02/17/2009	(809332)
37	05/15/2008	(809333)
38	05/20/2009	(809334)
39	06/12/2008	(809335)
40	06/11/2009	(809336)
41	07/17/2008	(809337)
42	06/11/2009	(809338)
43	08/15/2008	(809339)
44	08/19/2009	(809340)
45	09/15/2008	(809341)
46	09/14/2009	(809342)
47	09/15/2008	(809343)
48	10/16/2009	(809344)
49	11/14/2007	(809345)
50	11/17/2008	(809346)
51	11/19/2009	(809347)
52	12/13/2007	(809348)
53	12/17/2008	(809349)
54	12/18/2009	(809350)
55	12/13/2007	(809351)
56	12/17/2008	(809352)
57	09/14/2009	(809353)
58	03/15/2010	(832544)
59	03/15/2010	(832545)
60	05/14/2010	(832546)
61	06/14/2010	(846788)
62	06/14/2010	(861308)
63	08/23/2010	(867470)

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

Date: 04/30/2006 (581054) CN600335657
 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: 08/31/2006 (581065) CN600335657
 Self Report? YES Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)

Description: Failure to meet the limit for one or more permit parameter

Date: 02/29/2008 (618553)
 Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 315, SubChapter A 315.1
 40 CFR Chapter 403, SubChapter N, PT 403 403.18(b)(3)

Description: Failure to revise the City's Ordinance to incorporate changes implemented to SIU permits. These changes were reviewed by the TCEQ and accepted as a non substantial program modification.

Date: 11/30/2008 (809349) CN600335657

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: 07/31/2009 (809340) CN600335657

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: 08/14/2009 (764601) CN600335657

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
TPDES Multi-Sector Industrial TXR050000 PERMIT

Description: Failure to conduct quarterly periodic inspections.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
TPDES Multi-Sector Industrial TXR050000 PERMIT

Description: Failure to conduct annual comprehensive site evaluations.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
TPDES Multi-Sector Industrial TXR050000 PERMIT

Description: Failure to submit results of benchmark analyses to the TCEQ.

Date: 08/14/2009 (764069) CN600335657

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
30 TAC Chapter 317 317.4(b)(2)

Description: Failure to maintain the grit separator in good condition. One of the grit separators is in disrepair. This facility was designed with two grit separation units. One of the units is functional and the other is in extreme disrepair and appeared to be inoperable.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
30 TAC Chapter 317 317.4(g)

Description: Failure to prevent short circuiting of the treatment units. At aeration basin #1 and aeration basin #2 the liquid in these units was observed to be short circuiting through the rotor platforms instead of circulating through the unit as designed. The sludge accumulation is such that these units are filled over design capacity which is the probable cause of the short circuit. This is also causing wastewater to flow out of the basins.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
30 TAC Chapter 317 317.5(e)(1)

Description: Failure to maintain the sludge drying beds in good condition. Billy Palmer said that the drying beds are no longer being used. During the inspection it was observed that there was waste being deposited in the drying beds. Mr. Palmer said the drying beds are being used for disposal of wastewater from the City of Tyler Vector trucks. The drying beds were observed to be overgrown with vegetation.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
30 TAC Chapter 317 317.1

Description: Failure to prevent unauthorized discharge from aeration basin #1, aeration basin #2 and the Return Activated Sludge (RAS) unit. The Return Activated Sludge (RAS) unit was observed to be leaking at the northeast and southeast corners of the unit. Both of the aeration basins had areas of unauthorized discharge.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.11(d)

Description: Failure to accurately record the effluent flow on the chart recorder. During periods of high flow, the recorder would go off the scale and no flow was recorded during that time. The permittee needs to be able to accurately record and track the flow at all times.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.7(e)

Description: Failure to accurately report sample results on the Discharge Monitoring Reports (DMR's). The permittee is recording more samples than is required. The DMR's do not reflect the increased sampling activity.

Date 10/31/2009 (809347) CN600335657

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 12/31/2009 (809353) CN600335657

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 (832545) CN600335657
 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 04/08/2010 (795080) CN600335657
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
 30 TAC Chapter 317 317.4(b)(2)
 Description: Failure to maintain the grit separator in good condition. One of the grit separators is in disrepair. This facility was designed with two grit separation units. One of the units is functional and the other is in extreme disrepair and appeared to be inoperable.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
 30 TAC Chapter 317 317.4(g)
 Description: Failure to prevent short circuiting of the treatment units. At aeration basin #1 and aeration basin #2 the liquid in these units was observed to be short circuiting through the rotor platforms instead of circulating through the unit as designed. The sludge accumulation is such that these units are filled over design capacity which is the probable cause of the short circuit. This is also causing wastewater to flow out of the basins.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
 30 TAC Chapter 317 317.5(e)(1)
 Description: Failure to maintain the sludge drying beds in good condition. Billy Palmer said that the drying beds are no longer being used. During the inspection it was observed that there was waste being deposited in the drying beds. Mr. Palmer said the
 drying beds are being used for disposal of wastewater from the City of Tyler Vector trucks. The drying beds were observed to be overgrown with vegetation.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
 30 TAC Chapter 317 317.1
 Description: Failure to prevent unauthorized discharge from aeration basin #1, aeration basin #2 and the Return Activated Sludge (RAS) unit. The Return Activated Sludge (RAS) unit was observed to be leaking at the northeast and southeast corners of the unit. Both of the aeration basins had areas of unauthorized discharge.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 319, SubChapter A 319.11(d)
 Description: Failure to accurately record the effluent flow on the chart recorder. During periods of high flow, the recorder would go off the scale and no flow was recorded during that time. The permittee needs to be able to accurately record and track the flow at all times.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 319, SubChapter A 319.7(e)
 Description: Failure to accurately report sample results on the Discharge Monitoring Reports (DMR's). The permittee is recording more samples than is required. The DMR's do not reflect the increased sampling activity.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
 30 TAC Chapter 317 317.6(b)(3)
 Description: Failure to properly maintain the chlorine contact chamber in regards to the accumulation of grease and trash.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
 30 TAC Chapter 317 317.4(g)(4)(B)
 Description: Failure to have two aeration devices per aeration unit. During the investigation it was noted that one of the aeration devices was not operational. Due to this the wastewater within this track was stagnate and had a build up foam present.

Date 06/30/2010 (861308) CN600335657
 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 07/31/2010 (867470) CN600335657
 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

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	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	TEXAS COMMISSION ON
CITY OF TYLER	§	
RN101611150 AND RN102916459	§	ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2010-1697-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 Tyler (“the Respondent”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

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

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

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

I. FINDINGS OF FACT

1. The Respondent owns and operates two wastewater treatment plants with associated collection systems (“Systems”) at the following locations:

- a. 14939 County Road 46, approximately 20,000 feet west-northwest of the intersection of State Highway Loop 323 and United States Highway 69 and approximately seven miles northwest of the Smith County Courthouse in Tyler, Smith County (“Westside System”); and
 - b. 1.5 miles northwest of the intersection of United States Highway 69 and Farm-to-Market Road 2813 and approximately 3.4 miles south-southwest of the intersection of State Loop 323 and United States Highway 69 in Smith County (“Southside System”).
2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
 3. During a record review on June 28, 2010, TCEQ staff documented the following unauthorized discharges from the Westside System:

UNAUTHORIZED DISCHARGE TABLE			
Date	Locations	Amount Discharged (gallons)	Description
9/27/2009	Sewer main behind 1802 Pinecrest	50,000	Eight inch sewer main ruptured and discharged untreated wastewater into tributary BF-18 thence to Blackfork Creek.
10/21/2009	Collection line and manhole located south of Bellwood Road between Loop 323 and Whiteside Drive	20,000	Creek bank eroded and manhole was dislodged from location and discharged untreated wastewater into tributary 16.1 thence to Indian Creek.
10/23/2009	Third manhole east of silt dam on Lake Bellwood	21,000	Third manhole east of silt dam on Lake Bellwood overflowed as a result of a grease blockage in the collection system and discharged untreated wastewater into Indian Creek
11/9/2009	Manhole located at Pecan Drive and Green Lane	1,000	Manhole overflowed as a result of a grease blockage and discharged untreated wastewater into the storm drain, then flowed into tributary C, thence to tributary A and into West Mud Creek.
11/12/2009	Cleanout located at 100 block of North Forest Avenue	1,000	Cleanout overflowed as a result of a grease and debris blockage in the collection system and discharged untreated wastewater into tributary W-9 thence to Willow Creek.
11/20/2009	Manhole located at E. 5th Street and Loop 323 SW	1,000	Manhole overflowed as a result of a grease and debris blockage in the collection system and discharged untreated wastewater into tributary 18 thence to Blackfork Creek.

UNAUTHORIZED DISCHARGE TABLE CONTINUED			
3/4/2010	Manhole behind 858 SE Loop 323	5,000	Manhole overflowed as a result of a grease and debris blockage in the collection system and discharged untreated wastewater, which was contained on the ground.
4/9/2010	Manhole north of Autumn Leaves near 3100 WNW Loop 323	3,600	Manhole north of Autumn Leaves Drive overflowed as a result of a blockage caused by grease and roots and discharged untreated wastewater into tributary W-15.1, thence to tributary W-15 and into Lake Park.
4/14/2010	1000 feet east of North Broadway on West 32nd Street	2,400	Erosion undermined casing and 18 inch ductile iron sewer main causing the main to sag and leak and discharged untreated wastewater into Blackfork Creek.
5/7/2010	Third manhole East of the dead end of Club Lake Street	2,000	Manhole overflowed as a result of a blockage caused by grease and roots in the collection system and discharged untreated wastewater into tributary 26.1 thence to Blackfork Creek.
5/8/2010	Manhole in the 700 block of West 32nd Street	5,000	Manhole overflowed as a result of a blockage caused by roots in the collection system and discharged untreated wastewater into tributary BF-3 thence to Black Fork Creek.
6/10/2010	Green Briar lift station	75,000	Severe rainstorm deposited six inches of rain in a 24 hour period which resulted in an overflow of Greenbriar Lift Station and discharged untreated wastewater into a drainage ditch thence to Indian Creek.
6/11/2010	3369 Cascades Blvd.	51,000	Severe rainstorm washed away the silt dam resulting in two manholes being washed away and discharged untreated wastewater into Bell Wood Lake.
6/11/2010	Below the spillway of Bellwood Lake	85,000	Severe rainstorm caused excessive erosion and exposed an eight inch force main and damaged an 80 foot section of pipe and discharged untreated wastewater into Indian Creek

UNAUTHORIZED DISCHARGE TABLE CONCLUDED			
6/14/2010	Pasture near 10886 Green Briar Rd.	4,200	Severe rainstorm caused flash flooding which resulted in an electrical short in the pumps. Collection line backed up resulting in a leaking bell joint on the clay pipe and discharged untreated wastewater into Indian Creek.
6/17/2010	3369 Cascades Blvd.	4,000	During repairs to silt dam, temporary piers were damaged causing a 10 inch sewer main to separate and discharged untreated wastewater into Bell Wood Lake.

4. During an investigation conducted on October 28, 2010, TCEQ staff documented that a leaking 18-inch sewer main, located behind 3613 South Broadway, from the Southside System, discharged approximately 36,000 gallons of untreated wastewater into West Mud Creek, resulting in an estimated 250 dead fish.
5. The Respondent received notice of the violations on September 10, 2010 and November 29, 2010.
6. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Westside System:

CORRECTIVE ACTION TABLE		
Date	Locations	Description of Corrective Action
9/27/2009	Sewer main behind 1802 Pinecrest	Made repairs to eight inch sewer main and disinfected area and flushed creek with 500,000 gallons of water.
10/21/2009	Collection line and manhole located south of Bellwood Road between Loop 323 and Whiteside Drive	Made repairs to manhole and disinfected and flushed area.
10/23/2009	Third manhole east of silt dam on Lake Bellwood	Cleared blockage and disinfected area.
11/9/2009	Manhole located at Pecan Drive and Green Lane	Cleared blockage and disinfected area.
11/12/2009	Cleanout located at 100 block of North Forest Avenue	Cleared blockage and flushed the creek.
11/20/2009	Manhole located at E. 5th Street and 323 Loop SW	Cleared blockage and disinfected area.

CORRECTIVE ACTION TABLE CONTINUED		
3/4/2010	Manhole behind 858 SE loop 323	Cleared blockage, vacuumed out debris, and disinfected area.
4/9/2010	Manhole north of Autumn Leaves near 3100 WNW Loop 323	Cabled and vacuumed line, disinfected area, and flushed the creek.
4/19/2010	1000 feet east of North Broadway on West 32nd Street	Hired contractor to realign 18 inch sewer main and install new piers to support the sewer line.
5/7/2010	Third manhole east of the dead end of Club Lake Street	Cabled line, disinfected area, and flushed the affected area.
5/8/2010	Manhole in the 700 block of West 32nd Street	Cabled line, disinfected area, and flushed the affected area.
6/10/2010	Green Briar lift station	Installed temporary pumps to pump water back into the Westside System
6/11/2010	3369 Cascades Blvd.	Made temporary repairs by plugging both inflow and outflow pipes and setup bypass pumping to next downstream manhole about 450 feet away to stop the discharge until permanent repairs could be commenced on June 17, 2010.
6/14/2010	Below the spillway of Bellwood Lake	Replaced the 80-foot damaged section of the force main.
6/14/2010	Pasture near 10886 Green Briar Rd.	Disinfected affected area and replaced pumps at Greenbriar lift station.
6/17/2010	3369 Cascades Blvd.	Made temporary repairs to contain discharge and return to Westside System. By July 14, 2010, completed permanent repairs by rebuilding the silt dam, the two manholes, and approximately 50 feet of 10-inch sewer main.

7. The Executive Director recognizes that the Respondent by October 29, 2010, at the Southside System:
 - a. Dammed the creek upstream and downstream of the leaking sewer main to contain the discharge;
 - b. Bypassed and repaired the leaking section of the sewer main; and
 - c. Cleaned and disinfected the affected area and returned the discharge to the Southside System.

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 the unauthorized discharge of wastewater into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010653001, Permit Conditions No. 2.g.
3. As evidenced by Findings of Fact No. 4, the Respondent failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), TPDES Permit No. WQ0010653002, Permit Conditions No. 2.g.
4. 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.
5. An administrative penalty in the amount of Forty-One Thousand Four Hundred Dollars (\$41,400) 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. Forty-One Thousand Four Hundred Dollars (\$41,400) 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 Forty-One Thousand Four Hundred Dollars (\$41,400) as set forth in Section II, Paragraph 5 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 Tyler, Docket No. 2010-1697-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 5 above, Forty-One Thousand Four Hundred Dollars (\$41,400) of the assessed administrative penalty shall be offset with the condition that the Respondent implements 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 Systems operations referenced in this Agreed Order.
4. 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.
5. 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.
6. 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.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing",

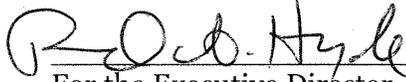
and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

8. 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

1/17/12

Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Tyler. I am authorized to agree to the attached Agreed Order on behalf of the City of Tyler, 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 Tyler 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

06/10/2011

Date

GREGORY M MORGAN

Name (Printed or typed)

Authorized Representative of
City of Tyler

ACTING 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: 2010-1697-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Tyler
Penalty Amount:	Forty-One Thousand Four Hundred Dollars (\$41,400)
SEP Offset Amount:	Forty-One Thousand Four Hundred Dollars (\$41,400)
Type of SEP:	Custom
Project Name:	Repair of Diversion Conduit Outlet Pipe on Whitehouse Dam
Location of SEP:	Smith 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 repair the diversion conduit outlet pipe located at 32°12'35.55"N, 95°10'22.38"W on Whitehouse Dam, a large-sized, high-hazard dam, in Smith County, Texas (the “Project”). The diversion conduit outlet pipe developed a large boil allowing sedimentation to be discharged into Prairie Creek.

Respondent shall use its own funds to provide the geotechnical and engineering work necessary to locate the source and stop the leakage/seepage occurring at the diversion conduit outlet at the dam. The SEP Offset Amount will be used to repair the diversion conduit outlet pipe. The Project will be implemented in three phases: preliminary engineering, design and construction. Respondent shall use its own funds to hire a licensed Texas Professional Engineer (LTPE) to perform the preliminary engineering study to evaluate the problem in concert with a geotechnical investigation of the Project area. Based upon the results of the preliminary work, the LTPE will perform the design work and develop plans, specifications, bidding, and contract documents, after which the Respondent will procure a construction contractor to perform the required repair work on the diversion conduit outlet pipe in the dam within the Project area. Specifically, the SEP Offset Amount will be used for the contractor costs of construction and for materials and equipment necessary to repair the diversion conduit outlet pipe. No SEP Offset Amount will be used for Respondent’s labor, engineering, or design phases of the Project.

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

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

B. Environmental Benefit

The SEP will reduce the amount of silt flowing into Prairie Creek downstream of the Whitehouse Dam and will help prevent future dam failure.

C. Minimum Expenditure

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

2. Performance Schedule

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

3. Records and Reporting

A. Progress Report

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

Table 2: Reporting Schedule

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

B. Final Report

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

1. Itemized list of expenditures and total costs of the project;
2. Copies of invoices and paid receipts;
3. Copies of checks or payment records for matching invoices and receipts;
4. Copy of engineering plans;
5. Copy of bidding invitation that includes the enforcement statement in Section 6, below;
6. Dated photographs of work being performed and of completed work;
7. Copy of As-builts or record drawings after work has been completed;
8. A notarized/certified statement of quantifiable environmental benefit; and
9. Any additional information that will demonstrate compliance with this Attachment A.

Copies of receipts, checks with associated invoices, and other documentation verifying appropriate expenditures and the completion of the project must be submitted with the final report.

C. Address

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

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

4. Additional Information and Access

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

5. Failure to Fully Perform

If Respondent does not perform its obligations under this Attachment A in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount.

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

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

6. **Publicity**

Any public statements concerning this SEP made by or on behalf of Respondent, must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

7. **Clean Texas Program**

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

8. **Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.