

**Executive Summary – Enforcement Matter – Case No. 43278**

**City of Denton**

**RN102546066**

**Docket No. 2012-0092-MLM-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

MLM – MSW, WQ

**Small Business:**

No

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

City of Denton PWS, 9401 Lake Ray Roberts Dam Road, Aubrey, Denton County

**Type of Operation:**

Surface water treatment plant

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

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

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$13,770

**Amount Deferred for Expedited Settlement:** \$2,754

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

**Total Paid to General Revenue:** \$11,016

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

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - N/A

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 43278**

**City of Denton**

**RN102546066**

**Docket No. 2012-0092-MLM-E**

***Investigation Information***

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

**Complaint Information:** N/A

**Date(s) of Investigation:** August 22, 2011

**Date(s) of NOE(s):** December 14, 2011

***Violation Information***

1. Failed to prevent the unauthorized discharge of municipal hazardous waste (“MHW”) into or adjacent to water in the state. Specifically, beginning on August 5, 2011, approximately 5,000 gallons of caustic solution (containing sodium hydroxide) was discharged from a chemical pit onto the ground and flowed into a storm drain that leads to an unnamed tributary of the Elm Fork of the Trinity River [30 TEX. ADMIN. CODE § 335.4 and TEX. WATER CODE § 26.121(a)(1)].

2. Failed to notify the TCEQ within 24 hours after the discovery of the unauthorized discharge of approximately 5,000 gallons of caustic solution from Respondent's surface water treatment plant. Specifically, the TCEQ Dallas/Fort Worth Region office was not notified of the unauthorized discharge, which began on approximately August 5, 2011 [TEX. WATER CODE § 26.039(b) and 30 TEX. ADMIN. CODE § 327.3(b)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

By August 11, 2011, Respondent stopped the discharge of MHW from the Facility.

**Technical Requirements:**

The Order will require Respondent to:

a. Within 30 days, update the Facility's operational guidance and conduct employee training to ensure that any future reportable discharges or spills be reported to the TCEQ as soon as possible, but no later than 24 hours after discovery; and

b. Within 180 days, investigate the area of unauthorized discharge to determine the lateral and vertical extent of affected environmental media and submit an Affected Property Assessment Report, fully documenting the investigation pursuant to 30 TEX. ADMIN. CODE § 350.91, to the Executive Director for approval. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program found in 30 TEX. ADMIN. CODE ch. 350 which may include: plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30 TEX. ADMIN. CODE § 350.33(l)); and Institutional Controls under Subchapter F.

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**City of Denton**

**RN102546066**

**Docket No. 2012-0092-MLM-E**

***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:** Jennifer Graves, Enforcement Division,  
Enforcement Team 1, MC R-15, (956) 430-6023; Debra Barber, Enforcement Division,  
MC 219, (512) 239-0412

**TCEQ SEP Coordinator:** N/A

**Respondent:** The Honorable Mark Burroughs, Mayor, City of Denton, 1701 Spencer  
Road, Suite B, Denton, Texas 76205

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





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	19-Dec-2011	<b>Screening</b>	3-Jan-2012	<b>EPA Due</b>	
	<b>PCW</b>	1-May-2012				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	City of Denton				
<b>Reg. Ent. Ref. No.</b>	RN102546066				
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Minor		

## CASE INFORMATION

<b>Enf./Case ID No.</b>	43278	<b>No. of Violations</b>	2
<b>Docket No.</b>	2012-0092-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>	Water Quality	<b>Enf. Coordinator</b>	Jennifer Graves
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

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

### 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 indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

**PAYABLE PENALTY**

**Screening Date** 3-Jan-2012

**Docket No.** 2012-0092-MLM-E

**PCW**

**Respondent** City of Denton

Policy Revision 2 (September 2002)

**Case ID No.** 43278

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN102546066

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** Jennifer Graves

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

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 2%

>> **Repeat Violator (Subtotal 3)**

N/A

**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 one NOV with dissimilar violations.

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

Screening Date 3-Jan-2012

Docket No. 2012-0092-MLM-E

PCW

Respondent City of Denton

Policy Revision 2 (September 2002)

Case ID No. 43278

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102546066

Media [Statute] Municipal Solid Waste

Enf. Coordinator Jennifer Graves

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 335.4 and Tex. Water Code § 26.121(a)(1)

Violation Description Failed to prevent the unauthorized discharge of municipal hazardous waste into or adjacent to water in the state, as documented during an investigation conducted on August 22, 2011. Specifically, beginning on August 5, 2011, approximately 5,000 gallons of caustic solution (containing sodium hydroxide) was discharged from a chemical pit onto the ground and flowed into a storm drain that leads to an unnamed tributary of the Elm Fork of the Trinity River.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		X		25%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment has been exposed to significant amounts of pollutants.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 5 Number of violation days 151

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

Violation Base Penalty \$12,500

Five monthly events are recommended from the date the discharge began (August 5, 2011) to the date of screening (January 3, 2012).

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$12,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$31,027

Violation Final Penalty Total \$12,750

This violation Final Assessed Penalty (adjusted for limits) \$12,750

## Economic Benefit Worksheet

**Respondent** City of Denton  
**Case ID No.** 43278  
**Req. Ent. Reference No.** RN102546066  
**Media** Municipal Solid Waste  
**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	\$500,000	5-Aug-2011	31-Oct-2012	1.24	\$31,027	n/a	\$31,027
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove, treat, test, and properly dispose of contaminated soil and liquid wastes at an authorized facility. Date required is the date the discharge began. Final date is the estimated 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

\$500,000

**TOTAL**

\$31,027

Screening Date 3-Jan-2012

Docket No. 2012-0092-MLM-E

PCW

Respondent City of Denton

Policy Revision 2 (September 2002)

Case ID No. 43278

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102546066

Media [Statute] Municipal Solid Waste

Enf. Coordinator Jennifer Graves

Violation Number 2

Rule Cite(s)

Tex. Water Code § 26.039(b) and 30 Tex. Admin. Code § 327.3(b)

Violation Description

Failed to notify the TCEQ within 24 hours after the discovery of the unauthorized discharge of approximately 5,000 gallons of caustic solution from the Respondent's surface water treatment plant, as documented during an investigation conducted on August 22, 2011. Specifically, the TCEQ Dallas/Fort Worth Region office was not notified of the unauthorized discharge, which began on approximately August 5, 2011.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

6 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$115

Violation Final Penalty Total \$1,020

This violation Final Assessed Penalty (adjusted for limits) \$1,020

## Economic Benefit Worksheet

**Respondent** City of Denton  
**Case ID No.** 43278  
**Reg. Ent. Reference No.** RN102546066  
**Media** Municipal Solid Waste  
**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
<i>No commas or \$</i>							

### 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	\$250	6-Aug-2011	31-Oct-2012	1.24	\$15	n/a	\$15
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost for updating the Facility's operational guidance. Date required is the date the notice of the unauthorized discharge was due. Final date is the expected 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]	\$100	6-Aug-2011	6-Aug-2011	0.00	\$0	\$100	\$100
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost for providing the required notice to the TCEQ. Date required and final date is the date the notice was due.

Approx. Cost of Compliance

\$350

**TOTAL**

\$115

# Compliance History

Customer/Respondent/Owner-Operator: CN600358980 City of Denton Classification: AVERAGE Rating: 2.37  
Regulated Entity: RN102546066 CITY OF DENTON PWS Classification: Site Rating:  
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0610002  
WATER LICENSING LICENSE 0610002  
Location: 9401 LAKE RAY ROBERTS DAM RD, AUBREY, DENTON CO, TX  
TCEQ Region: REGION 04 - DFW METROPLEX  
Date Compliance History Prepared: May 03, 2012  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: May 03, 2007 to May 03, 2012  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Jennifer Graves Phone: (956) 430-6023

## Site Compliance History Components

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

## Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
  - 1 06/05/2007 (562056)
  - 2 04/25/2008 (681089)
  - 3 08/15/2008 (687540)
  - 4 04/01/2011 (901021)
  - 5 12/14/2011 (950474)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 08/06/2008 (687540) CN600358980  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)(A)  
Description: Violation of: §290.46(m)(1)(A)  
Failure to maintain the McKenna Park ground storage tank in corrosive free state.
- 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 DENTON  
RN102546066**

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

**AGREED ORDER  
DOCKET NO. 2012-0092-MLM-E**

**I. JURISDICTION AND STIPULATIONS**

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 Denton ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a surface water treatment plant located at 9401 Lake Ray Roberts Dam Road in Aubrey, Denton County, Texas (the "Facility").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26.
3. The Facility involves the management of municipal hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361 or any rule, permit, or order of the Commission.
4. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
5. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about December 19, 2011.
6. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

7. An administrative penalty in the amount of Thirteen Thousand Seven Hundred Seventy Dollars (\$13,770) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Eleven Thousand Sixteen Dollars (\$11,016) of the administrative penalty and Two Thousand Seven Hundred Fifty-Four Dollars (\$2,754) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
8. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
9. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
10. The Executive Director recognizes that, by August 11, 2011, the Respondent stopped the discharge of municipal hazardous waste ("MHW") from the Facility.
11. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
12. 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.
13. 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.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to prevent the unauthorized discharge of MHW into or adjacent to water in the state, in violation of 30 TEX. ADMIN. CODE § 335.4 and TEX. WATER CODE § 26.121(a)(1), as documented during an investigation conducted on August 22, 2011. Specifically, beginning on August 5, 2011, approximately 5,000 gallons of caustic solution (containing sodium hydroxide) was discharged from a chemical pit onto the ground and flowed into a storm drain that leads to an unnamed tributary of the Elm Fork of the Trinity River.
2. Failed to notify the TCEQ within 24 hours after the discovery of the unauthorized discharge of approximately 5,000 gallons of caustic solution from the Respondent's surface water treatment plant, in violation of TEX. WATER CODE § 26.039(b) and 30 TEX. ADMIN. CODE § 327.3(b), as documented during an investigation conducted on August 22, 2011. Specifically, the TCEQ Dallas/Fort Worth Region office was not notified of the unauthorized discharge, which began on approximately August 5, 2011.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 7 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Denton, Docket No. 2012-0092-MLM-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 undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that any future reportable discharges or spills be reported to the TCEQ as soon as possible, but no later than 24 hours after discovery, in accordance with TEX. WATER CODE § 26.039(b) and 30 TEX. ADMIN. CODE § 327.3(b); and
  - b. Within 180 days after the effective date of this Agreed Order, investigate the area of unauthorized discharge in accordance with 30 TEX. ADMIN. CODE § ch. 350 to determine the lateral and vertical extent of affected environmental media and submit an Affected Property Assessment Report, fully documenting the investigation pursuant to 30 TEX. ADMIN. CODE § 350.91, to the Executive Director for approval. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program found in 30 TEX. ADMIN. CODE ch. 350 which may include: plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30 TEX. ADMIN. CODE § 350.33(l)); and Institutional Controls under Subchapter F. Submit the report to:

VCP/CA Section  
Remediation Division MC 221  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

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

and another copy to:

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

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

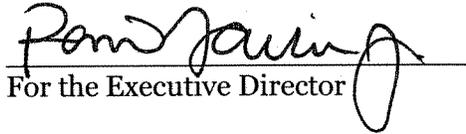
could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, 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. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

  
For the Executive Director

8/10/12  
Date

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

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 *MRK*

May 23, 2012  
Date

MARK BURROUGHS, MAYOR  
Name (Printed or typed)  
Authorized Representative of  
City of Denton

Mayor  
Title

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