

Executive Summary – Enforcement Matter – Case No. 44465
City of Winona
RN101919447
Docket No. 2012-1358-MWD-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MWD

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

City of Winona, west of Harris Creek and south of Farm-to-Market Road 16, approximately 1000 feet due south of the intersection of Farm-to-Market Road 16 and State Highway 155, Smith County

Type of Operation:

Wastewater treatment facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: August 30, 2013

Comments Received: No

Penalty Information

Total Penalty Assessed: \$14,527

Amount Deferred for Expedited Settlement: \$2,905

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$11,622

Name of SEP: Compliance SEP

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002 and September 2011

Executive Summary – Enforcement Matter – Case No. 44465
City of Winona
RN101919447
Docket No. 2012-1358-MWD-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: May 3, 2012
Date(s) of NOE(s): May 16, 2012

Violation Information

1. Failed to submit monitoring results at the intervals specified in the permit. Specifically, failed to submit discharge monitoring reports ("DMRs") for the months of September 2011 through February 2012 by the 20th day of the following month [30 TEX. ADMIN. CODE § 305.125(17) and § 319.7(d) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010922001, Monitoring and Reporting Requirements No. 1].
2. Failed to submit the annual sludge report for the monitoring period ending July 31, 2011 by September 30, 2011 [30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. WQ0010922001, Sludge Provisions].
3. Failed to comply with permitted effluent limits. Specifically, exceeded the permitted daily average concentration limit of 30 milligrams per liter for biochemical oxygen demand for the monitoring period ending March 31, 2011 [TPDES Permit No. WQ0010922001, Effluent Limitations and Monitoring Requirements No. 1, 30 TEX. ADMIN. CODE §305.125(1) and TEX. WATER CODE § 26.121(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require Respondent to:

- a. Within 30 days, submit the DMRs for the months of September 2011 through February 2012 and the annual sludge report for the monitoring period ending July 31, 2011;
- b. Within 30 days, update the facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified DMRs and annual sludge reports;
- c. Within 45 days, submit written certification of compliance with Ordering Provisions 3.a. and b. as described in Ordering Provision 3.d. below; and

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Docket No. 2012-1358-MWD-E

d. Within 90 days, submit certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0010922001, including specific corrective actions that were implemented at the facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted limitations.

Litigation Information

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

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Cheryl Thompson, Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5886; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456
TCEQ SEP Coordinator: Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565
Respondent: James Bixler, Manager, City of Winona, P.O. Box 97, Winona, Texas 75792
Honorable Rusty Smith, Mayor, City of Winona, P.O. Box 97, Winona, Texas 75792
Respondent's Attorney: N/A

Attachment A
Docket Number: 2012-1358-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Winona
Penalty Amount:	Eleven Thousand Six Hundred Twenty-Two Dollars (\$11,622)
SEP Offset Amount:	Eleven Thousand Six Hundred Twenty-Two Dollars (\$11,622)
Type of SEP:	Compliance SEP
Project Name:	<i>Wastewater Treatment Plant Repair</i>
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 perform 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 is a Local Government that qualifies under Texas Water Code § 7.067 to apply the SEP Offset Amount set forth above to correct violations at its wastewater treatment facility which are described in this Agreed Order. This Agreed Order cites violations at the Respondent’s wastewater treatment facility. Respondent shall build and install a new outflow weir; dredge and clean outflow stream; and chemically treat sewer ponds to kill and remove duckweed. Specifically, the SEP Offset Amount shall be used for materials, supplies, and equipment rental for one or more of the following: outflow weir; dredge and clean outflow stream; and chemicals to treat sewer ponds (the “Project”). Respondent shall solicit bids from qualified contractors to construct a new outflow weir, dredge and clean outflow stream, and chemically treat sewer ponds. Any advertisements, including solicitation for bids publication, related to the SEP must include the enforcement statement as stated in Section 6, Publicity, below. The Project will be performed in accordance with all federal, state, and local environmental laws and regulations, including obtaining any permits that may be required prior to commencement of the work.

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

Respondent's signature affixed to the attached Agreed Order certifies that Respondent has not previously performed this Project, and that the SEP is being performed solely as part of the terms of settlement in this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by improving the quality of wastewater effluent being released into the environment. Inadequately treated effluent can carry bacteria, viruses, protozoa (parasitic organisms), helminthes (intestinal worms), and bioaerosols (inhalable molds and fungi). The diseases they may cause range in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis.

C. Minimum Expenditure

Respondent shall spend at least the SEP Offset Amount to complete the Project described in Section 1, above, and comply with all other provisions of this SEP. Respondent understands that it may cost more than the SEP Offset Amount to complete the Project.

Estimated Cost Schedule

Item	Quantity	Cost	Units	Total
Chemicals for treating ponds	8	\$450.00	Gallons	\$3,600.00
Materials for V-Notch Weir: Sheet of stainless steel Nuts, bolts, washers 1" x 1" 20' tubing #25 screen mesh		\$550.00		\$550.00
Equipment rental for 2 weeks: Hydraulic Excavator	1	\$2,050.00	Per week	\$4,100.00
Contract Labor		\$3,750.00		\$3,750.00
Total				\$12,000.00

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 90 days after the effective date of this Agreed Order.

3. Records and Reporting

A. Progress Report

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

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

B. Final Report

Within 90 days after the effective date of the Agreed Order, or within 60 days after completion of SEP, whichever is earlier, Respondent shall submit a Final Report to the TCEQ, which shall include the following:

1. Itemized list of expenditures and total cost of the Project;
2. Copies of invoices, paid receipts, cleared checks or payment records corresponding to the itemized list in paragraph 3.B.1., above;
3. Proof of publication of invitation for bids (publication must include the enforcement statement, as stated in Section 6, Publicity, below);
4. Dated photographs of the work performed; before and after the equipment installation process; and include photographs of the completed Project;
5. Copies of all engineering plans related to work performed pursuant to the Project;
6. A notarized/certified statement and supporting documentation demonstrating the quantifiable environmental benefits achieved as a result of the Project; and
7. Any additional information demonstrating compliance with this Attachment A.

C. Address

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

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

4. Additional Information and Access

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

5. Failure to Fully Perform

If Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 through 4 above, the Executive Director (“ED”) may require immediate payment of all or part of the SEP Offset Amount as set forth in the attached Agreed Order.

In the event the ED determines that Respondent failed to fully implement and complete the Project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for reimbursement of a SEP, shall make the check payable to “Texas Commission on Environmental Quality,” and shall mail it to:

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

6. Publicity

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

7. Clean Texas Program

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

8. Other SEPs by TCEQ or Other Agencies

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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	11-Jun-2012	Screening	22-Jun-2012	EPA Due	
	PCW	10-Jul-2012				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Winona		
Reg. Ent. Ref. No.	RN101919447		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	44465	No. of Violations	1
Docket No.	2012-1358-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Cheryl Thompson
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$1,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **49.0%** Enhancement **Subtotals 2, 3, & 7** **\$490**

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

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$0**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts **\$1,659**
 Approx. Cost of Compliance **\$11,172**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$1,490**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$1,490**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$1,490**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$298**

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

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY **\$1,192**

Screening Date 22-Jun-2012

Docket No. 2012-1358-MWD-E

PCW

Respondent City of Winona

Policy Revision 2 (September 2002)

Case ID No. 44465

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101919447

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	9	45%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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) 49%

>> 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 eight months of self-reported effluent violations, one NOV with same/similar violations, and two NOVs with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 49%

Screening Date 22-Jun-2012

Docket No. 2012-1358-MWD-E

PCW

Respondent City of Winona

Policy Revision 2 (September 2002)

Case ID No. 44465

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101919447

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 1

Rule Cite(s) Texas Pollutant Discharge Elimination System Permit No. WQ0010922001, Effluent Limitations and Monitoring Requirements No. 1, 30 Tex. Admin. Code § 305.125(1) and Tex. Water Code § 26.121(a)

Violation Description Failed to comply with permitted effluent limits, as documented during a record review conducted on May 3, 2012. Specifically, the Respondent exceeded the permitted daily average concentration limit of 30 milligrams per liter for biochemical oxygen demand for the monitoring period ending March 31, 2011.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual			X	10%
	Potential				

>> Programmatic Matrix

Falsification	3/19/2014	Moderate	Minor	Percent
				0%

Matrix Notes

A simplified model was used to evaluate biochemical oxygen demand to determine whether the discharged amounts of pollutants exceeded levels that are protective of human health or the environment. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 31 Number of violation days

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

Violation Base Penalty \$1,000

One quarterly 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 \$1,659

Violation Final Penalty Total \$1,490

This violation Final Assessed Penalty (adjusted for limits) \$1,490

Economic Benefit Worksheet

Respondent City of Winona
Case ID No. 44465
Reg. Ent. Reference No. RN101919447
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				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)	\$11,172	31-Mar-2011	19-Mar-2014	2.97	\$1,659	n/a	\$1,659

Notes for DELAYED costs

The estimated cost to determine the cause of non-compliance and to make any necessary adjustments/repairs to the Facility to return to compliance with permitted effluent limitations. Date required is the month the first non-compliant excursion was documented. Final date is the projected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

	\$11,172
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TOTAL

	\$1,659
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Caption: Docket No. 2012-1358-MWD-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of the City of Winona in Smith County; RN101919447; for water quality violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Cheryl Thompson, Candy Garrett)



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	11-Jun-2012	Screening	22-Jun-2012	EPA Due	
	PCW	10-Jul-2012				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Winona		
Reg. Ent. Ref. No.	RN101919447		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	44465	No. of Violations	2
Docket No.	2012-1358-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Cheryl Thompson
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

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

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

Culpability Enhancement **Subtotal 4**

Notes: The Respondent does not meet the culpability criteria.

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

Economic Benefit Enhancement* **Subtotal 6**

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

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

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY

Screening Date 22-Jun-2012

Docket No. 2012-1358-MWD-E

PCW

Respondent City of Winona

Policy Revision 3 (September 2011)

Case ID No. 44465

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101919447

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	9	45%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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) 49%

>> 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 eight months of self-reported effluent violations, one NOV with same/similar violations, and two NOVs with dissimilar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 49%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 49%

Screening Date 22-Jun-2012

Docket No. 2012-1358-MWD-E

PCW

Respondent City of Winona

Policy Revision 3 (September 2011)

Case ID No. 44465

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101919447

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(17) and 319.7(d) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010922001, Monitoring and Reporting Requirements No. 1

Violation Description Failed to submit monitoring results at the intervals specified in the permit. Specifically, the Respondent failed to submit discharge monitoring reports ("DMRs") for the months of September 2011 through February 2012 by the 20th day of the following month.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0.0%
Potential				

>> Programmatic Matrix

Matrix Notes	Harm			Percent
	Major	Moderate	Minor	
	x			5.0%
100% of the rule requirement was not met.				

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 6 Number of violation days 200

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

Violation Base Penalty \$7,500

Six single events are recommended (one event for each report).

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 \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$42

Violation Final Penalty Total \$11,175

This violation Final Assessed Penalty (adjusted for limits) \$11,175

Economic Benefit Worksheet

Respondent City of Winona
Case ID No. 44465
Reg. Ent. Reference No. RN101919447
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	\$250	3-May-2012	19-Mar-2014	1.88	\$23	n/a	\$23
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$150	20-Oct-2011	19-Mar-2014	2.41	\$18	n/a	\$18

Notes for DELAYED costs

Estimated cost to prepare and submit the missing DMRs (\$25 per report), and to update the Facility's operational guidance and conduct employee training to ensure that all reporting requirements are properly accomplished and timely submitted. Dates required are the date the first DMR was due and the date of the record review. Final date is the projected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance	\$400	TOTAL	\$42
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Screening Date 22-Jun-2012

Docket No. 2012-1358-MWD-E

PCW

Respondent City of Winona

Policy Revision 3 (September 2011)

Case ID No. 44465

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101919447

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 305.125(17) and TPDES Permit No. WQ0010922001, Sludge Provisions

Violation Description Failed to submit the annual sludge report for the monitoring period ending July 31, 2011 by September 30, 2011.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

266 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$1,250

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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6

Violation Final Penalty Total \$1,863

This violation Final Assessed Penalty (adjusted for limits) \$1,863

Economic Benefit Worksheet

Respondent City of Winona
Case ID No. 44465
Reg. Ent. Reference No. RN101919447
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description 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)	\$50	30-Sep-2011	19-Mar-2014	2.47	\$6	\$6

Notes for DELAYED costs

Estimated cost to prepare and submit the annual sludge report for the monitoring period ending July 31, 2011. Date required is the date the report was due. Final date is the projected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$50

TOTAL

\$6

Screening Date 22-Jun-2012

Docket No. 2012-1358-MWD-E

PCW

Respondent City of Winona

Policy Revision 2 (September 2002)

Case ID No. 44465

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101919447

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 1

Rule Cite(s) Texas Pollutant Discharge Elimination System Permit No. WQ0010922001, Effluent Limitations and Monitoring Requirements No. 1, 30 Tex. Admin. Code § 305.125(1) and Tex. Water Code § 26.121(a)

Violation Description

Failed to comply with permitted effluent limits, as documented during a record review conducted on May 3, 2012. Specifically, the Respondent exceeded the permitted daily average concentration limit of 30 milligrams per liter for biochemical oxygen demand for the monitoring period ending March 31, 2011.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	10%
Potential				

>> Programmatic Matrix

Falsification	3/19/2014	Moderate	Minor	Percent
				0%

Matrix Notes

A simplified model was used to evaluate biochemical oxygen demand to determine whether the discharged amounts of pollutants exceeded levels that are protective of human health or the environment. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 Number of violation days 31

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

Violation Base Penalty \$1,000

One quarterly event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Reduction	
	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 \$1,659

Violation Final Penalty Total \$1,490

This violation Final Assessed Penalty (adjusted for limits) \$1,490

Economic Benefit Worksheet

Respondent City of Winona
Case ID No. 44465
Reg. Ent. Reference No. RN101919447
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				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)	\$11,172	31-Mar-2011	19-Mar-2014	2.97	\$1,659	n/a	\$1,659

Notes for DELAYED costs

The estimated cost to determine the cause of non-compliance and to make any necessary adjustments/repairs to the Facility to return to compliance with permitted effluent limitations. Date required is the month the first non-compliant excursion was documented. Final date is the projected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$11,172

TOTAL

\$1,659

Compliance History Report

Customer/Respondent/Owner-Operator: CN600652119 City of Winona Classification: AVERAGE Rating: 2.29

Regulated Entity: RN101919447 CITY OF WINONA Classification: AVERAGE Site Rating: 1.58

ID Number(s): WASTEWATER PERMIT WQ0010922001
WASTEWATER EPA ID TX0073229
WASTEWATER LICENSING LICENSE WQ0010922001

Location: located west of Harris Creek and south of Farm-to-Market Road 16, approximately 1000 feet due south of the intersection of Farm-to-Market Road 16 and State Highway 155 in Smith County, Texas

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: July 02, 2012

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 02, 2007 to July 02, 2012

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

Name: Cheryl Thompson Phone: (817) 588-5886

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES
2. Has there been a (known) change in ownership/operator of the site during the compliance period? NO
3. If YES, who is the current owner/operator? N/A
4. If YES, who was/were the prior owner(s)/operator(s)? N/A
5. If YES, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
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	06/04/2012	(1002651)
2	10/22/2007	(604292)
3	08/20/2007	(604293)
4	10/01/2007	(623282)
5	10/22/2007	(623283)
6	11/26/2007	(623284)
7	02/11/2008	(674638)
8	01/07/2008	(674639)
9	01/17/2008	(674640)
10	04/07/2008	(692967)
11	04/14/2008	(692968)
12	05/27/2008	(692969)
13	08/28/2008	(701254)
14	08/11/2008	(714158)
15	08/27/2008	(714159)
16	09/25/2008	(714160)
17	01/20/2009	(723361)
18	11/03/2008	(730172)
19	12/03/2008	(730173)
20	12/29/2008	(730174)

21 02/09/2009 (753382)
 22 03/12/2009 (770892)
 23 03/30/2009 (770893)
 24 05/08/2009 (770894)
 25 07/06/2010 (803241)
 26 03/05/2010 (812474)
 27 06/03/2009 (812475)
 28 07/06/2009 (812476)
 29 07/30/2009 (812477)
 30 09/11/2009 (812478)
 31 10/01/2009 (812479)
 32 10/30/2009 (812480)
 33 11/25/2009 (812481)
 34 12/23/2009 (812482)
 35 01/14/2010 (812483)
 36 03/15/2010 (833602)
 37 04/16/2010 (833603)
 38 10/04/2010 (874846)
 39 10/07/2010 (874847)
 40 08/19/2010 (882439)
 41 10/14/2010 (882440)
 42 11/15/2010 (888892)
 43 01/13/2011 (890714)
 44 12/27/2010 (897244)
 45 02/24/2011 (910068)
 46 02/24/2011 (910069)
 47 07/22/2010 (917267)
 48 05/05/2011 (938959)
 49 05/05/2011 (938960)
 50 06/13/2011 (940831)
 51 07/15/2011 (953619)
 52 07/15/2011 (953620)
 53 09/06/2011 (960237)
 54 09/06/2011 (966289)
 55 10/28/2011 (972305)
 56 04/11/2012 (995894)

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

Date: 11/30/2007 (674639) CN600652119
 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: 10/31/2008 (730173) CN600652119
 Self Report? YES Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
 30 TAC Chapter 305, SubChapter F 305.125(1)
 Description: Failure to meet the limit for one or more permit parameter

Date 01/23/2009 (723361) CN600652119
 Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 30, SubChapter J 30.331(b)
 30 TAC Chapter 30, SubChapter J 30.350(d)
 Description: Failure to have a certified operator in accordance with the Title 30 Texas
 Administrative Code (TAC) §30.331(b) and §30.350(n).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
 30 TAC Chapter 317 317.2
 Description: Failure to secure a facility, area or site when required.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)
Description: Failure to provide adequate records requested by the investigator.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to properly maintain the flow measuring device.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.11(d)
Description: Failure to measure the head at the proper location.
Date 01/31/2010 (812474) CN600652119

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 04/30/2010 (874846) CN600652119

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 05/31/2010 (874847) CN600652119

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 07/11/2010 (803241) CN600652119

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 30, SubChapter J 30.331(b)
30 TAC Chapter 30, SubChapter J 30.350(d)
Description: Failure to have a certified operator in accordance with the Title 30 Texas
Administrative Code (TAC) §30.331(b) and §30.350(n).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)
30 TAC Chapter 317 317.2
Description: Failure to secure a facility, area or site when required.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)
Description: Failure to provide adequate records requested by the investigator.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to properly maintain the flow measuring device.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 319, SubChapter A 319.11(d)
Description: Failure to measure the head at the proper location.
Date 09/30/2010 (888892) CN600652119

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 12/31/2010 (910069) CN600652119

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 03/31/2011 (938960) CN600652119

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 06/13/2011 (940831) CN600652119

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 305, SubChapter F 305.125(17)
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

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 WINONA
RN101919447**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2012-1358-MWD-E**

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Winona ("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 together stipulate that:

1. The Respondent owns and operates a wastewater treatment facility located west of Harris Creek and south of Farm-to-Market Road 16, approximately 1,000 feet due south of the intersection of Farm-to-Market Road 16 and State Highway 155 in Smith County, Texas (the "Facility").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Executive Director 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.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 21, 2012.
5. 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.

6. An administrative penalty in the amount of Fourteen Thousand Five Hundred Twenty-Seven Dollars (\$14,527) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Two Thousand Nine Hundred Five Dollars (\$2,905) 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. Eleven Thousand Six Hundred Twenty-Two Dollars (\$11,622) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").
7. 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.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. 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.
10. 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.
11. 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 submit monitoring results at the intervals specified in the permit, in violation of 30 TEX. ADMIN. CODE §§ 305.125(17) and 319.7(d) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010922001, Monitoring and Reporting Requirements No. 1, as documented during a record review conducted on May 3, 2012. Specifically, the Respondent failed to submit discharge monitoring reports ("DMRs") for the months of September 2011 through February 2012 by the 20th day of the following month.
2. Failed to submit the annual sludge report for the monitoring period ending July 31, 2011 by September 30, 2011, in violation of 30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. WQ0010922001, Sludge Provisions, as documented during a record review conducted on May 3, 2012.

3. Failed to comply with permitted effluent limits, in violation of TPDES Permit No. WQ0010922001, Effluent Limitations and Monitoring Requirements No. 1, 30 TEX. ADMIN. CODE § 305.125(1) and TEX. WATER CODE § 26.121(a), as documented during a record review conducted on May 3, 2012. Specifically, the Respondent exceeded the permitted daily average concentration limit of 30 milligrams per liter for biochemical oxygen demand for the monitoring period ending March 31, 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 6 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 Winona, Docket No. 2012-1358-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 I, Paragraph 6 above, Eleven Thousand Six Hundred Twenty-Two Dollars (\$11,622) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, submit the DMRs for the months of September 2011 through February 2012 and the annual sludge report for the monitoring period ending July 31, 2011, in accordance with the requirements of TPDES Permit No. WQ0010922001 to:

Compliance Monitoring Team (MC 224)
Enforcement Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified DMRs and annual sludge reports, in accordance with TPDES Permit No. WQ0010922001;
- c. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provisions Nos. 3.a. and 3.b. as described in Ordering Provision No. 3.d. below; and
- d. Within 90 days after the effective date of this Agreed Order, submit certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0010922001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reported discharge monitoring reports, demonstrating at least three consecutive months of compliance with all permitted limitations. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3734

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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.
8. 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.
9. 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Tracy Miller

For the Executive Director

9.26.13

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]

Signature

7-10-13

Date

James Bixler

Name (Printed or typed)
Authorized Representative of
City of Winona

Manager

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.

Attachment A
Docket Number: 2012-1358-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Winona
Penalty Amount:	Eleven Thousand Six Hundred Twenty-Two Dollars (\$11,622)
SEP Offset Amount:	Eleven Thousand Six Hundred Twenty-Two Dollars (\$11,622)
Type of SEP:	Compliance SEP
Project Name:	<i>Wastewater Treatment Plant Repair</i>
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 perform 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 is a Local Government that qualifies under Texas Water Code § 7.067 to apply the SEP Offset Amount set forth above to correct violations at its wastewater treatment facility which are described in this Agreed Order. This Agreed Order cites violations at the Respondent’s wastewater treatment facility. Respondent shall build and install a new outflow weir; dredge and clean outflow stream; and chemically treat sewer ponds to kill and remove duckweed. Specifically, the SEP Offset Amount shall be used for materials, supplies, and equipment rental for one or more of the following: outflow weir; dredge and clean outflow stream; and chemicals to treat sewer ponds (the “Project”). Respondent shall solicit bids from qualified contractors to construct a new outflow weir, dredge and clean outflow stream, and chemically treat sewer ponds. Any advertisements, including solicitation for bids publication, related to the SEP must include the enforcement statement as stated in Section 6, Publicity, below. The Project will be performed in accordance with all federal, state, and local environmental laws and regulations, including obtaining any permits that may be required prior to commencement of the work.

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

Respondent's signature affixed to the attached Agreed Order certifies that Respondent has not previously performed this Project, and that the SEP is being performed solely as part of the terms of settlement in this enforcement action.

B. Environmental Benefit

This SEP will provide a discernible environmental benefit by improving the quality of wastewater effluent being released into the environment. Inadequately treated effluent can carry bacteria, viruses, protozoa (parasitic organisms), helminthes (intestinal worms), and bioaerosols (inhalable molds and fungi). The diseases they may cause range in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis.

C. Minimum Expenditure

Respondent shall spend at least the SEP Offset Amount to complete the Project described in Section 1, above, and comply with all other provisions of this SEP. Respondent understands that it may cost more than the SEP Offset Amount to complete the Project.

Estimated Cost Schedule

Item	Quantity	Cost	Units	Total
Chemicals for treating ponds	8	\$450.00	Gallons	\$3,600.00
Materials for V-Notch Weir: Sheet of stainless steel Nuts, bolts, washers 1" x 1" 20' tubing #25 screen mesh		\$550.00		\$550.00
Equipment rental for 2 weeks: Hydraulic Excavator	1	\$2,050.00	Per week	\$4,100.00
Contract Labor		\$3,750.00		\$3,750.00
Total				\$12,000.00

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 90 days after the effective date of this Agreed Order.

3. Records and Reporting

A. Progress Report

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

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

B. Final Report

Within 90 days after the effective date of the Agreed Order, or within 60 days after completion of SEP, whichever is earlier, Respondent shall submit a Final Report to the TCEQ, which shall include the following:

1. Itemized list of expenditures and total cost of the Project;
2. Copies of invoices, paid receipts, cleared checks or payment records corresponding to the itemized list in paragraph 3.B.1., above;
3. Proof of publication of invitation for bids (publication must include the enforcement statement, as stated in Section 6, Publicity, below);
4. Dated photographs of the work performed; before and after the equipment installation process; and include photographs of the completed Project;
5. Copies of all engineering plans related to work performed pursuant to the Project;
6. A notarized/certified statement and supporting documentation demonstrating the quantifiable environmental benefits achieved as a result of the Project; and
7. Any additional information demonstrating compliance with this Attachment A.

C. Address

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

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

4. Additional Information and Access

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

5. Failure to Fully Perform

If Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 through 4 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount as set forth in the attached Agreed Order.

In the event the ED determines that Respondent failed to fully implement and complete the Project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for reimbursement of a SEP, shall make the check payable to "Texas Commission on Environmental Quality," and shall mail it to:

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

6. Publicity

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

7. Clean Texas Program

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

8. Other SEPs by TCEQ or Other Agencies

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