

**Executive Summary – Enforcement Matter – Case No. 44194**  
**Port of Houston Authority**  
**RN103123113**  
**Docket No. 2012-1042-MWD-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

MWD

**Small Business:**

No

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

Jacintoport Terminal, located at 16203 Penninsula Boulevard, approximately 3,500 feet upstream of the confluence of Carpenters Bayou and the Houston Ship Channel, Harris County

**Type of Operation:**

Wastewater treatment plant

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** November 2, 2012

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$8,250

**Amount Deferred for Expedited Settlement:** \$1,650

**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:** \$3,300

Name of SEP: Houston Arboretum & Nature Center - Hurricane Ike Habitat Restoration and Removal of Invasive Species

**SEP Conditional Offset:** \$3,300

Name of SEP: Bayou Land Conservancy fka Legacy Land Trust - Spring Creek Greenway Project

**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. 44194**  
**Port of Houston Authority**  
**RN103123113**  
**Docket No. 2012-1042-MWD-E**

***Investigation Information***

**Complaint Date(s):** N/A  
**Complaint Information:** N/A  
**Date(s) of Investigation:** May 8, 2012  
**Date(s) of NOE(s):** May 17, 2012

***Violation Information***

Failed to comply with permitted effluent limits for pH, chlorine, ammonia nitrogen and total suspended solids [Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0012375001, Effluent Limitations and Monitoring Requirements Nos. 1, 2 and 3, 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:**

1. The Order will require Respondent to implement and complete two Supplemental Environmental Projects ("SEP"). (See SEP Attachments A and B)
2. The Order will also require Respondent to, within 90 days, submit written certification of compliance with the permitted effluent limitations of Permit No. WQ0012375001, 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 effluent 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:** Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Debra Barber, Enforcement Division, MC 219, (512) 239-0412  
**TCEQ SEP Coordinator:** Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565

**Executive Summary – Enforcement Matter – Case No. 44194**  
**Port of Houston Authority**  
**RN103123113**  
**Docket No. 2012-1042-MWD-E**

**Respondent:** Charlie Jenkins, Vice President, Port of Houston Authority, P.O. Box 2562, Houston, Texas 77252

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

**Attachment A**  
**Docket Number: 2012-1042-MWD-E**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	Port of Houston Authority
<b>Penalty Amount:</b>	Six Thousand Six Hundred Dollars (\$6,600)
<b>SEP Offset Amount:</b>	Three Thousand Three Hundred Dollars (\$3,300)
<b>Type of SEP:</b>	Contribution to a Pre-approved Third-Party Recipient
<b>Third-Party Recipient:</b>	Houston Arboretum & Nature Center
<b>Project Name:</b>	<i>Hurricane Ike Habitat Restoration and Removal of Invasive Species</i>
<b>Location of SEP:</b>	Harris County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **Houston Arboretum & Nature Center** for the *Hurricane Ike Habitat Restoration and Removal of Invasive Species* project. The contribution will be used in accordance with the SEP between the Third-Party Recipient and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to clear hurricane debris and invasive species, conduct a forest inventory of existing vegetation in each acre, and then replant the areas of tree loss in a 155-acre non-profit urban nature sanctuary located on the western edge of Memorial Park in Houston, Texas (the “Arboretum”). Invasive Chinese Privet (*Ligustrum sinensis*) shall also be removed by cutting stems/trunks and treating with approved herbicide to retard subsequent growth. The Third-Party Recipient shall then conduct the forest inventory of existing vegetation in each acre, followed by replanting with native trees and shrubs at a rate of 100 plants per acre.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Port of Houston Authority  
Attachment A

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

**B. Environmental Benefit**

The Project will restore the native wildlife habitat at the Arboretum which is located in a highly urban area. The restored forest will enhance water quality by serving as a filter for nutrients and other heavy metals thereby reducing the amount of pollutants reaching Buffalo Bayou. This project will also contribute to public awareness of environmental matters since the Arboretum hosts nearly 200,000 visitors each year.

**C. Minimum Expenditure**

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall make the check payable to the Houston Arboretum & Nature Center SEP and shall mail the contribution with a copy of the Agreed Order to:

Deborah Markey, Executive Director  
Houston Arboretum & Nature Center  
4501 Woodway Drive  
Houston, Texas 77024

**3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount due to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

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

#### **4. Failure to Fully Perform**

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

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

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

#### **5. Publicity**

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

#### **6. Clean Texas Program**

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

#### **7. Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this 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.

**Attachment B**  
**Docket Number: 2012-1042-MWD-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** Port of Houston Authority  
**Penalty Amount:** Six Thousand Six Hundred Dollars (\$6,600)  
**SEP Offset Amount:** Three Thousand Three Hundred Dollars (\$3,300)  
**Type of SEP:** Pre-approved  
**Third-Party Recipient:** Bayou Land Conservancy *fka Legacy Land Trust*  
**Project Name:** Spring Creek Greenway Project  
**Location of SEP:** Harris or Montgomery Counties

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment B.

**1. Project Description**

A. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **Bayou Land Conservancy** for the *Spring Creek Greenway Project*. The contribution will be used in accordance with the Supplemental Environmental Project Agreement between the Third-Party Recipient and the TCEQ (the “Project”). Specifically, this SEP will focus on preserving multiple tracts of land comprising approximately 1,000 acres in the riparian corridor east of FM 2978 and west of U.S. 59. The Third-Party Recipient shall use SEP Funds to acquire conservation easements on these tracts to provide permanent protection and stewardship of these lands and waters. The Third-Party Recipient shall also use SEP Funds to conduct restoration work, including tree plantings, on these tracts, as needed. All property acquired in whole or in part with SEP Funds must be preserved in perpetuity through a conservation easement that complies with Subchapter A, Chapter 183, Texas Natural Resources Code. The holder of the conservation easement must be an entity that meets the definition of “holder” under section 183.001(2), TEXAS NATURAL RESOURCES CODE. Additionally, the holder of the conservation easement may not also be the owner of the property. The Third-Party Recipient shall use only conservation easements that are substantially similar to the conservation easement described in the SEP Agreement between Third-Party Recipient and TCEQ. The Third-Party Recipient

shall not use or set aside SEP Funds for legal defense of these properties without prior written approval of the TCEQ.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

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

#### B. Environmental Benefit

The preservation of open space in the Spring Creek Greenway Project area provides substantial environmental, economic, and community benefits for the region. Spring Creek is on the State's 303(d) list for water quality impairment due to bacteria. The sandy banks of Spring Creek have frequently been stripped of their native vegetation, increasing erosion potential and reducing wildlife habitat. However, for such a highly populated area, northern Harris and southern Montgomery Counties are still heavily forested. Protecting this forested area's trees, understory and wetlands helps absorb fertilizer, roadway runoff, and animal fecal matter from the nearby highly populated areas. Biofiltration through these vegetated areas protects Spring Creek from non-point source water pollution by slowing the flow of run-off and assisting particulates and their associated pollutants to settle. As pollutants settle out via washover through these forests, they are immobilized, decomposed and absorbed back into the soil, instead of running off into the waterway. By preserving the natural vegetated banks, turbidity is reduced, and source water for recreation and human consumption is protected from further degradation before reaching the San Jacinto River, which feeds Lake Houston, a primary water source for Houston. Having vegetated areas remain protected along this area, while also increasing tree plantings through this project, will help protect this waterway from contaminants. Finally, the linking of open space enhances the conservation value of this greenway project by reversing land fragmentation.

#### C. Minimum Expenditure

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

## 2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

Bayou Land Conservancy  
Jennifer Lorenz, Executive Director  
10330 Lake Road, Building J  
Houston, Texas 77070

### **3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount due to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

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

### **4. Failure to Fully Perform**

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

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

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

### **5. Publicity**

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

**6. Clean Texas Program**

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

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

The SEP Offset Amount identified in this 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**

<b>DATES</b>	<b>Assigned</b>	21-May-2012	<b>Screening</b>	21-May-2012	<b>EPA Due</b>	
	<b>PCW</b>	25-May-2012				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Port of Houston Authority
<b>Reg. Ent. Ref. No.</b>	RN103123113
<b>Facility/Site Region</b>	12-Houston
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	44194	<b>No. of Violations</b>	1
<b>Docket No.</b>	2012-1042-MWD-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Jorge Ibarra, P.E.
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$2,500
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	34.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$850
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Notes: Enhancement for two NOVs with dissimilar violations and six months of self-reported effluent violations.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$314  
Approx. Cost of Compliance \$5,000  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$3,350
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	-3.7%	<b>Adjustment</b>	-\$125
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommend reduction in penalty amount so that monthly self-reported violations do not overly impact the penalty amount.

<b>Final Penalty Amount</b>	\$3,225
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$3,225
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<b>DEFERRAL</b>	20.0% Reduction	<b>Adjustment</b>	-\$645
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

<b>PAYABLE PENALTY</b>	\$2,580
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Screening Date 21-May-2012

Docket No. 2012-1042-MWD-E

PCW

Respondent Port of Houston Authority

Policy Revision 2 (September 2002)

Case ID No. 44194

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103123113

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	6	30%
	Other written NOVs	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) 34%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for two NOVs with dissimilar violations and six months of self-reported effluent violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 34%

Screening Date 21-May-2012

Docket No. 2012-1042-MWD-E

PCW

Respondent Port of Houston Authority

Policy Revision 2 (September 2002)

Case ID No. 44194

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103123113

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 1

Rule Cite(s)

Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0012375001, Effluent Limitations and Monitoring Requirements No. 2, 30 Tex. Admin. Code § 305.125(1) and Tex. Water Code § 26.121(a)

Violation Description

Failed to comply with permitted effluent limits. See attached Effluent Limit Violation Table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

31 Number of violation days

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

Violation Base Penalty \$2,500

One monthly event is recommended for the month of August 2011.

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 \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$314

Violation Final Penalty Total \$3,225

This violation Final Assessed Penalty (adjusted for limits) \$3,225

## Economic Benefit Worksheet

**Respondent** Port of Houston Authority  
**Case ID No.** 44194  
**Reg. Ent. Reference No.** RN103123113  
**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)	\$5,000	31-Aug-2011	1-Dec-2012	1.25	\$314	n/a	\$314

#### Notes for DELAYED costs

Estimated cost to develop and implement procedures to ensure compliance with permitted effluent limits. Date required is the first date of non-compliance; and the final date is the expected compliance date.

### 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

\$5,000

**TOTAL**

31

\$314



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	21-May-2012	<b>Screening</b>	21-May-2012	<b>EPA Due</b>	
	<b>PCW</b>	25-May-2012				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Port of Houston Authority	
<b>Reg. Ent. Ref. No.</b>	RN103123113	
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b> Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	44194	<b>No. of Violations</b>	1
<b>Docket No.</b>	2012-1042-MWD-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Jorge Ibarra, P.E.
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$3,750**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** **34.0%** Enhancement **Subtotals 2, 3, & 7** **\$1,275**

Notes: Enhancement for two NOVs with dissimilar violations and six months of self-reported effluent 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 \$0  
 Approx. Cost of Compliance \$0  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$5,025**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** **\$5,025**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$5,025**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$1,005**

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** **\$4,020**

Screening Date 21-May-2012

Docket No. 2012-1042-MWD-E

PCW

Respondent Port of Houston Authority

Policy Revision 3 (September 2011)

Case ID No. 44194

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103123113

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	6	30%
	Other written NOVs	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%

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) 34%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for two NOVs with dissimilar violations and six months of self-reported effluent violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 34%

>> Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 34%

**Screening Date** 21-May-2012  
**Respondent** Port of Houston Authority  
**Case ID No.** 44194  
**Reg. Ent. Reference No.** RN103123113  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Jorge Ibarra, P.E.

**Docket No.** 2012-1042-MWD-E

**PCW**

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

**Violation Number** 1

**Rule Cite(s)**

Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0012375001, Effluent Limitations and Monitoring Requirements Nos. 1 and 3, 30 Tex. Admin. Code § 305.125(1) and Tex. Water Code § 26.121(a)

**Violation Description**

Failed to comply with permitted effluent limits. See attached Effluent Limit Violation Table.

**Base Penalty** \$25,000

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

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

**Percent** 5.0%

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor

**Percent** 0.0%

Matrix Notes

A simplified model was used to evaluate ammonia nitrogen to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Total suspended solids and pH values were also considered. 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** \$23,750

\$1,250

**Violation Events**

Number of Violation Events 3

121 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

**Violation Base Penalty** \$3,750

Three quarterly events are recommended for the quarters containing the months of October 2011 through February 2012.

**Good Faith Efforts to Comply**

0.0% Reduction

\$0

	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** \$3,750

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

**Statutory Limit Test**

**Estimated EB Amount** \$0

**Violation Final Penalty Total** \$5,025

**This violation Final Assessed Penalty (adjusted for limits)** \$5,025

# Economic Benefit Worksheet

**Respondent** Port of Houston Authority  
**Case ID No.** 44194  
**Req. Ent. Reference No.** RN103123113  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See economic benefit for Violation No. 1 on the accompanying PCW.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$0

**TOTAL** \$0

Port of Houston Authority  
 RN103123113, Case No. 44194, TPDES Permit No. WQ0012375001  
 Docket No. 2012-1042-MWD-E

**EFFLUENT PARAMETER**

**Permit Limit**

	Cl <sub>2</sub> Residual Maximum Concentration	pH Minimum	NH <sub>3</sub> N Daily Average Concentration	NH <sub>3</sub> N Single Grab Concentration	TSS Daily Average Concentration	TSS Single Grab Concentration
<i>Month/Year</i>	4 mg/L	6.0 su	5 mg/L	15 mg/L	15 mg/L	60 mg/L
August 2011	7	c	c	c	c	c
October 2011	c	c	c	c	24	c
November 2011	c	c	5.6	c	36	78
December 2011	c	c	12	20.3	91	154
January 2012	c	4.9	c	c	74	122
February 2012	c	5.2	c	c	42	84

su = standard units    mg/L = milligrams per liter    c = compliant  
 NH<sub>3</sub>N = ammonia nitrogen    Cl<sub>2</sub> = chlorine    TSS = total suspended solids

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN600134324	Port of Houston Authority	Classification: AVERAGE	Rating: 3.27
Regulated Entity:	RN103123113	JACINTOPORT TERMINAL	Classification: AVERAGE	Site Rating: 0.19
ID Number(s):	WASTEWATER	PERMIT		WQ0012375001
	WASTEWATER	EPA ID		TX0087998
	WASTEWATER	EPA ID		TXS001202
	WASTEWATER	PERMIT		WQ0004421000
Location:	located at 16203 Penninsula Boulevard, approximately 3,500 feet upstream of the confluence of Carpenters Bayou and the Houston Ship Channel in Harris County, Texas			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	May 22, 2012			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 22, 2007 to May 22, 2012			

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

Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

## 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	05/17/2012	(1003141)
2	03/20/2012	(1004696)
3	11/20/2007	(594372)
4	11/20/2007	(597320)
5	12/12/2007	(609914)
6	06/15/2007	(624823)
7	07/19/2007	(624824)
8	08/20/2007	(624825)
9	09/18/2007	(624826)
10	10/18/2007	(624827)
11	11/14/2007	(624830)
12	12/17/2007	(624832)
13	01/14/2008	(624834)
14	04/30/2008	(650554)
15	02/19/2008	(675492)
16	03/12/2008	(675493)
17	04/16/2008	(675494)

18	06/25/2008	(682736)
19	05/20/2008	(693834)
20	06/12/2008	(693835)
21	07/15/2008	(693836)
22	09/22/2008	(715168)
23	10/22/2008	(715169)
24	11/17/2008	(730986)
25	12/17/2008	(730987)
26	01/20/2009	(730988)
27	02/11/2009	(754232)
28	03/12/2009	(754233)
29	04/14/2009	(754234)
30	05/18/2009	(771528)
31	06/09/2009	(771529)
32	06/30/2010	(801546)
33	02/17/2010	(814704)
34	07/21/2009	(814705)
35	08/31/2009	(814706)
36	09/17/2009	(814707)
37	10/15/2009	(814708)
38	11/19/2009	(814709)
39	12/15/2009	(814710)
40	01/20/2010	(814711)
41	03/11/2010	(834361)
42	04/15/2010	(834362)
43	05/19/2010	(834363)
44	06/16/2010	(847339)
45	07/19/2010	(861777)
46	08/31/2010	(868190)
47	09/14/2010	(875110)
48	10/13/2010	(882722)
49	11/11/2010	(889132)
50	12/13/2010	(897510)
51	01/19/2011	(903397)
52	02/17/2011	(910313)
53	03/09/2011	(917525)
54	04/19/2011	(928599)
55	05/18/2011	(939220)
56	06/16/2011	(946642)
57	07/20/2011	(953898)
58	08/16/2011	(960492)
59	09/20/2011	(966553)
60	10/18/2011	(972563)
61	11/18/2011	(978711)
62	12/19/2011	(985527)
63	01/19/2012	(991822)

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

Date: **06/25/2008** (682736)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 111, SubChapter A 111.147(1)(A)  
 5C THC Chapter 382, SubChapter D 382.085(b)  
 Description: Failure to adequately control dust emissions from truck and/or heavy-duty vehicle pathways.

Date: **06/30/2010** (801546) CN600134324  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(5)  
 Operational Requirements, P. 9, No. 1 PERMIT  
 Description: Failure to maintain the chlorine contact basin free of sludge.

Date: **08/31/2011** (966553) CN600134324  
 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: **10/31/2011** (978711) CN600134324  
 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: **11/30/2011** (985527) CN600134324  
 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: **12/31/2011** (991822) CN600134324  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter

Date: **01/31/2012** (999186) CN600134324  
 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: **02/29/2012** (1004696) CN600134324  
 Self Report? YES Classification: Moderate  
 Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 Description: Failure to meet the limit for one or more permit parameter

## F. Environmental audits.

N/A

## G. Type of environmental management systems (EMSs).

N/A

## H. Voluntary on-site compliance assessment dates.

N/A

## I. Participation in a voluntary pollution reduction program.

N/A

## J. Early compliance.

N/A

## Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
PORT OF HOUSTON AUTHORITY  
RN103123113**

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

**AGREED ORDER  
DOCKET NO. 2012-1042-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 Port of Houston Authority ("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 plant located at 16203 Penninsula Boulevard, approximately 3,500 feet upstream of the confluence of Carpenters Bayou and the Houston Ship Channel in Harris County, Texas (the "Facility").
2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. 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 22, 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 Eight Thousand Two Hundred Fifty Dollars (\$8,250) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). One Thousand Six Hundred Fifty Dollars (\$1,650) 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. Six Thousand Six Hundred Dollars (\$6,600) shall be conditionally offset by the Respondent's completion of Supplemental Environmental Projects ("SEPs").

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 failed to comply with permitted effluent limits, in violation of Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0012375001, Effluent Limitations and Monitoring Requirements Nos. 1, 2 and 3, 30 TEX. ADMIN. CODE § 305.125(1) and TEX. WATER CODE § 26.121(a), as documented during a record review conducted on May 8, 2012 as shown in the table below:

<b>EFFLUENT PARAMETER</b>						
<b>Permit Limit</b>						
	Cl <sub>2</sub> Residual Maximum Concentration	pH Minimum	NH <sub>3</sub> N Daily Average Concentration	NH <sub>3</sub> N Single Grab Concentration	TSS Daily Average Concentration	TSS Single Grab Concentration
<i>Month/Year</i>	4 mg/L	6.0 su	5 mg/L	15 mg/L	15 mg/L	60 mg/L
August 2011	7	c	c	c	c	c
October 2011	c	c	c	c	24	c
November 2011	c	c	5.6	c	36	78
December 2011	c	c	12	20.3	91	154
January 2012	c	4.9	c	c	74	122
February 2012	c	5.2	c	c	42	84

su = standard units mg/L = milligrams per liter c = compliant  
NH<sub>3</sub>N = ammonia nitrogen Cl<sub>2</sub> = chlorine TSS = total suspended solids

### 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: Port of Houston Authority, Docket No. 2012-1042-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 the SEPs in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Six Thousand Six Hundred Dollars (\$6,600) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEPs defined in Attachments A and B, 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 agreements.

3. The Respondent shall, within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of Permit No. WQ0012375001, 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 effluent 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk Avenue, Suite H  
Houston, Texas 77023-1486

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

Penw Sami Jr  
For the Executive Director

4/18/13  
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.

Charlie Jenkins  
Signature

JULY 10, 2012  
Date

CHARLIE JENKINS  
Name (Printed or typed)  
Authorized Representative of  
Port of Houston Authority

VICE PRESIDENT, STRATEGIC PLANNING  
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: 2012-1042-MWD-E**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	Port of Houston Authority
<b>Penalty Amount:</b>	Six Thousand Six Hundred Dollars (\$6,600)
<b>SEP Offset Amount:</b>	Three Thousand Three Hundred Dollars (\$3,300)
<b>Type of SEP:</b>	Contribution to a Pre-approved Third-Party Recipient
<b>Third-Party Recipient:</b>	Houston Arboretum & Nature Center
<b>Project Name:</b>	<i>Hurricane Ike Habitat Restoration and Removal of Invasive Species</i>
<b>Location of SEP:</b>	Harris County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **Houston Arboretum & Nature Center** for the *Hurricane Ike Habitat Restoration and Removal of Invasive Species* project. The contribution will be used in accordance with the SEP between the Third-Party Recipient and the TCEQ (the “Project”). Specifically, the SEP Offset Amount will be used to clear hurricane debris and invasive species, conduct a forest inventory of existing vegetation in each acre, and then replant the areas of tree loss in a 155-acre non-profit urban nature sanctuary located on the western edge of Memorial Park in Houston, Texas (the “Arboretum”). Invasive Chinese Privet (*Ligustrum sinensis*) shall also be removed by cutting stems/trunks and treating with approved herbicide to retard subsequent growth. The Third-Party Recipient shall then conduct the forest inventory of existing vegetation in each acre, followed by replanting with native trees and shrubs at a rate of 100 plants per acre.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

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

**B. Environmental Benefit**

The Project will restore the native wildlife habitat at the Arboretum which is located in a highly urban area. The restored forest will enhance water quality by serving as a filter for nutrients and other heavy metals thereby reducing the amount of pollutants reaching Buffalo Bayou. This project will also contribute to public awareness of environmental matters since the Arboretum hosts nearly 200,000 visitors each year.

**C. Minimum Expenditure**

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall make the check payable to the Houston Arboretum & Nature Center SEP and shall mail the contribution with a copy of the Agreed Order to:

Deborah Markey, Executive Director  
Houston Arboretum & Nature Center  
4501 Woodway Drive  
Houston, Texas 77024

**3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount due to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

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

#### **4. Failure to Fully Perform**

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

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

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

#### **5. Publicity**

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

#### **6. Clean Texas Program**

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

#### **7. Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this 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.

**Attachment B**  
**Docket Number: 2012-1042-MWD-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>Port of Houston Authority</b>
<b>Penalty Amount:</b>	<b>Six Thousand Six Hundred Dollars (\$6,600)</b>
<b>SEP Offset Amount:</b>	<b>Three Thousand Three Hundred Dollars (\$3,300)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>Bayou Land Conservancy <i>fka Legacy Land Trust</i></b>
<b>Project Name:</b>	<b>Spring Creek Greenway Project</b>
<b>Location of SEP:</b>	<b>Harris or Montgomery Counties</b>

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project (“SEP”). The SEP Offset Amount is set forth above and such offset is conditioned upon completion of the project in accordance with the terms of this Attachment B.

**1. Project Description**

A. Project

Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to the **Bayou Land Conservancy** for the *Spring Creek Greenway Project*. The contribution will be used in accordance with the Supplemental Environmental Project Agreement between the Third-Party Recipient and the TCEQ (the “Project”). Specifically, this SEP will focus on preserving multiple tracts of land comprising approximately 1,000 acres in the riparian corridor east of FM 2978 and west of U.S. 59. The Third-Party Recipient shall use SEP Funds to acquire conservation easements on these tracts to provide permanent protection and stewardship of these lands and waters. The Third-Party Recipient shall also use SEP Funds to conduct restoration work, including tree plantings, on these tracts, as needed. All property acquired in whole or in part with SEP Funds must be preserved in perpetuity through a conservation easement that complies with Subchapter A, Chapter 183, Texas Natural Resources Code. The holder of the conservation easement must be an entity that meets the definition of “holder” under section 183.001(2), TEXAS NATURAL RESOURCES CODE. Additionally, the holder of the conservation easement may not also be the owner of the property. The Third-Party Recipient shall use only conservation easements that are substantially similar to the conservation easement described in the SEP Agreement between Third-Party Recipient and TCEQ. The Third-Party Recipient

shall not use or set aside SEP Funds for legal defense of these properties without prior written approval of the TCEQ.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

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

#### B. Environmental Benefit

The preservation of open space in the Spring Creek Greenway Project area provides substantial environmental, economic, and community benefits for the region. Spring Creek is on the State's 303(d) list for water quality impairment due to bacteria. The sandy banks of Spring Creek have frequently been stripped of their native vegetation, increasing erosion potential and reducing wildlife habitat. However, for such a highly populated area, northern Harris and southern Montgomery Counties are still heavily forested. Protecting this forested area's trees, understory and wetlands helps absorb fertilizer, roadway runoff, and animal fecal matter from the nearby highly populated areas. Biofiltration through these vegetated areas protects Spring Creek from non-point source water pollution by slowing the flow of run-off and assisting particulates and their associated pollutants to settle. As pollutants settle out via washover through these forests, they are immobilized, decomposed and absorbed back into the soil, instead of running off into the waterway. By preserving the natural vegetated banks, turbidity is reduced, and source water for recreation and human consumption is protected from further degradation before reaching the San Jacinto River, which feeds Lake Houston, a primary water source for Houston. Having vegetated areas remain protected along this area, while also increasing tree plantings through this project, will help protect this waterway from contaminants. Finally, the linking of open space enhances the conservation value of this greenway project by reversing land fragmentation.

#### C. Minimum Expenditure

Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

## 2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. Respondent shall mail the contribution, with a copy of the Agreed Order to:

Bayou Land Conservancy  
Jennifer Lorenz, Executive Director  
10330 Lake Road, Building J  
Houston, Texas 77070

### **3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount due to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

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

### **4. Failure to Fully Perform**

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

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

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

### **5. Publicity**

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

**6. Clean Texas Program**

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

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

The SEP Offset Amount identified in this 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.