

**Executive Summary – Enforcement Matter – Case No. 51590**  
**City of Balch Springs**  
**RN105552640**  
**Docket No. 2015-1761-WQ-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

WQ

**Small Business:**

No

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

City of Balch Springs MS4, located within the limits of Balch Springs in the Dallas urbanized area, Dallas County

**Type of Operation:**

Small municipal separate storm sewer system

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** April 8, 2016

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$22,500

**Amount Deferred for Expedited Settlement:** \$4,500

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

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

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

Payment Plan: N/A

**Supplemental Environmental Project ("SEP") Conditional Offset:** \$18,000

Name of SEP: Old Library Asbestos Abatement and Demolition (Custom)

**Compliance History Classifications:**

Person/CN - High

Site/RN - High

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** April 2014

***Investigation Information***

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

**Complaint Information:** N/A

**Date(s) of Investigation:** October 1, 2015

**Date(s) of NOE(s):** November 19, 2015

**Executive Summary – Enforcement Matter – Case No. 51590**  
**City of Balch Springs**  
**RN105552640**  
**Docket No. 2015-1761-WQ-E**

***Violation Information***

1. Failed to maintain authorization to discharge stormwater under a Texas Pollutant Discharge Elimination System ("TPDES") General Permit for small separate storm sewer systems. Specifically, TPDES General Permit No. TXR040213 expired on August 13, 2012, and a Notice of Intent and revised Stormwater Management Program were not submitted by the application deadline date of June 11, 2014 [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(a)(9)(i)(A)].
2. Failed to submit the annual reports for years 2012 and 2013. Specifically, the Respondent failed to submit the annual reports for years 2012 and 2013 to the TCEQ within 90 days of the end of each permit year [30 TEX. ADMIN. CODE § 281.25(a)(4), 40 CODE OF FEDERAL REGULATIONS § 122.26(a)(9)(i)(A), and TPDES General Permit No. TXR040213, Part IV.B.2].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

1. The Order will require the Respondent to implement and complete a SEP (see SEP Attachment A).
2. The Order will also require the Respondent to:
  - a. Immediately, until such time that authorization to discharge stormwater is obtained, or until 180 days, whichever is earlier, comply with the permit requirements in expired TPDES General Permit No. TXR040213.
  - b. Within 30 days:
    - i. Submit a completed Notice of Intent and revised Stormwater Management Program;
    - ii. Update the Facility's operational guidance and conduct employee training to ensure that reporting requirements are properly accomplished, including the timely submittal of annual reports; and
    - iii. Submit the completed annual reports for years 2012 and 2013 to the Executive Director.
  - c. Within 45 days, submit written certification of compliance with b.ii. and b.iii.

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d. Within 180 days, submit written certification that authorization to discharge stormwater has been obtained.

***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:** Austin Henck, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-6155; Melissa Cordell, Enforcement Division, MC 219, (512) 239-2483  
**TCEQ SEP Coordinator:** Meaghan Bailey, SEP Coordinator, Litigation Division, MC 175, (512) 239-0205  
**Respondent:** The Honorable Carrie J. Marshall, Mayor, City of Balch Springs, 13503 Alexander Road, Balch Springs, Texas 75181-3401  
**Respondent's Attorney:** N/A



**Attachment A**

**Docket Number: 2015-1761-WQ-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Table 1: Case Information**

<b>Respondent:</b>	City of Balch Springs
<b>Penalty Amount:</b>	Eighteen Thousand Dollars (\$18,000)
<b>SEP Offset Amount:</b>	Eighteen Thousand Dollars (\$18,000)
<b>Type of SEP:</b>	Custom
<b>Project Name:</b>	<i>Old Library Asbestos Abatement and Demolition</i>
<b>Location of SEP:</b>	Dallas 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 shall hire a contractor to remove asbestos and demolish the substandard structure, previously the Balch Springs Library, at 9317 Pioneer Road in Balch Springs, Dallas County, Texas. The recovered land will be incorporated into the surrounding parkland for public use. Asbestos removal and disposal will be performed by qualified contractors; those contractors will file the Texas Department of Health and Safety Notice of Asbestos Abatement and Demolition on behalf of the Respondent. The hired demolition contractor will obtain the permit for demolition. The demolition contractor will install a construction fence that will surround the site until demolition is complete.

Specifically, the SEP Offset Amount shall be used for materials, supplies, equipment, and engineering services for one or more of the following: removal of asbestos, transportation and disposal of asbestos, demolition of structure, demolition of the structure’s foundation, removal of debris, and project area construction fencing (the “Project”). Respondent shall solicit bids from qualified contractors to perform the work. Any advertisement, including publication, related to the SEP must include the enforcement statement as stated in Section 6, Publicity. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent shall use the SEP Offset Amount only for the direct cost of implementing the Project, 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 no prior commitment to perform this Project and that the SEP is being performed solely as part of the terms of settlement in this enforcement action.

**B. Environmental Benefit**

The SEP will provide a discernible environmental benefit by reducing the risk of asbestos exposure by properly removing asbestos and demolishing the substandard structure, previously the Balch Springs Library. Asbestos exposure can lead to serious health conditions, including lung cancer, mesothelioma, and asbestosis.

In addition, the cleared land will be absorbed by the adjacent park, providing recreational opportunities for the community.

**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**

<b>Item</b>	<b>Total</b>
Asbestos Abatement	
Remove Sprayed-on ceiling texture (approx. 2,000 sq. ft.)	
Remove 12 x 12 black floor mastic (approx. 2,000 sq. ft.)	
Remove drywall joint compound (approx. 5,000 sq. ft.)	\$10,897
Remove exterior caulk at windows/doors (approx. 1,000 sq. ft.)	
Manifest waste prior to offsite transportation and disposal	
Demolition of Structure and Foundation	
Demolition	\$7,928
Haul away	
Construction Fencing	\$950
<b>Total</b>	<b>\$19,775</b>

**2. Performance Schedule**

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

**3. Records and Reporting**

**A. Progress Report**

Within 30 days after the effective date of this Agreed Order, Respondent shall submit a Notice of Commencement to the TCEQ describing actions performed to date to implement the Project. Within 90 days of the effective date of this Agreed Order, Respondent shall submit a report detailing the progress made and all actions completed on the Project during the previous 60-day period and setting forth a schedule for achieving completion of the Project within the 365-day timeframe set forth in Section 2, Performance Schedule, above. Thereafter, Respondent shall submit progress reports to the TCEQ in 90-day increments containing detailed information on all actions completed on the Project to date as set forth in the Reporting Schedule table below:

**Table 2: Reporting Schedule**

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

**B. Final Report**

Within 30 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. Copies of proof of advertisement of invitation for bids, if applicable, (the publication must include the statement that the SEP was performed as a result of a TCEQ enforcement action);
4. A certified/notarized statement of quantifiable environmental benefit;
5. Detailed map showing specific locations of the asbestos abatement and

- demolition site(s);
6. Copies of all engineering plans related to work performed pursuant to the Project, if applicable;
  7. Dated photographs of the purchased materials and supplies; before and after work being performed during the asbestos abatement and demolition process; and of the completed Project;
  8. Any additional information Respondent believes will, or that is requested by TCEQ to demonstrate compliance with this Attachment A.;

C. Address

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

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

**4. Additional Information and Access**

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

**5. Failure to Fully Perform**

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

In the event the ED determines that Respondent failed to fully implement and complete the Project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. 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. Recognition**

Respondent may not seek recognition for this project 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 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

<b>DATES</b>	<b>Assigned</b>	23-Nov-2015	<b>Screening</b>	1-Dec-2015	<b>EPA Due</b>	
	<b>PCW</b>	1-Dec-2015				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	City of Balch Springs
<b>Reg. Ent. Ref. No.</b>	RN105552640
<b>Facility/Site Region</b>	4-Dallas/Fort Worth
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>		<b>No. of Violations</b>	2
<b>Enf./Case ID No.</b>	51590	<b>Order Type</b>	1660
<b>Docket No.</b>	2015-1761-WQ-E	<b>Government/Non-Profit</b>	Yes
<b>Media Program(s)</b>	Water Quality	<b>Enf. Coordinator</b>	Austin Henck
<b>Multi-Media</b>		<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** **\$25,000**

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

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

**Compliance History** **-10.0%** Adjustment **Subtotals 2, 3, & 7** **-\$2,500**

Notes: Reduction for High Performer classification.

**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: \$284  
 Estimated Cost of Compliance: \$2,200  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$22,500**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$22,500**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$22,500**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$4,500**

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** **\$18,000**

Screening Date 1-Dec-2015

Docket No. 2015-1761-WQ-E

PCW

Respondent City of Balch Springs

Policy Revision 4 (April 2014)

Case ID No. 51590

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN105552640

Media [Statute] Water Quality

Enf. Coordinator Austin Henck

**Compliance History Worksheet**

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

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

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

No

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

High Performer

**Adjustment Percentage (Subtotal 7)** -10%

>> **Compliance History Summary**

Compliance History Notes

Reduction for High Performer classification.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** -10%

>> **Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** -10%

Screening Date 1-Dec-2015

Docket No. 2015-1761-WQ-E

PCW

Respondent City of Balch Springs

Policy Revision 4 (April 2014)

Case ID No. 51590

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN105552640

Media [Statute] Water Quality

Enf. Coordinator Austin Henck

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(a)(9)(i)(A)

Violation Description Failed to maintain authorization to discharge stormwater under a Texas Pollutant Discharge Elimination System ("TPDES") General Permit for small separate storm sewer systems, as documented during an investigation conducted on October 1, 2015. Specifically, TPDES General Permit No. TXR040213 expired on August 13, 2012, and a Notice of Intent ("NOI") and revised Stormwater Management Program ("SWMP") were not submitted by the application deadline date of June 11, 2014.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (0.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (5.0%).

Matrix Notes 100% of the rule requirements were not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 18 Number of violation days 538

Table for event frequency: daily, weekly, monthly (marked with X), quarterly, semiannual, annual, single event.

Violation Base Penalty \$22,500

Eighteen monthly events are recommended from the permit application deadline of June 11, 2014 to the screening date of December 1, 2015.

Good Faith Efforts to Comply

0.0%

Reduction \$0

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

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

Violation Subtotal \$22,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$260

Violation Final Penalty Total \$20,250

This violation Final Assessed Penalty (adjusted for limits) \$20,250

# Economic Benefit Worksheet

**Respondent** City of Balch Springs  
**Case ID No.** 51590  
**Reg. Ent. Reference No.** RN105552640  
**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	Overtime 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	\$2,000	11-Jun-2014	16-Jan-2017	2.60	\$260	n/a	\$260
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare and submit an NOI and a revised SWMP, and to obtain authorization to discharge stormwater, calculated from the application deadline to the expected date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,000

**TOTAL**

\$260

Screening Date 1-Dec-2015

Docket No. 2015-1761-WQ-E

PCW

Respondent City of Balch Springs

Policy Revision 4 (April 2014)

Case ID No. 51590

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN105552640

Media [Statute] Water Quality

Enf. Coordinator Austin Henck

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 281.25(a)(4), 40 Code of Federal Regulations § 122.26(a)(9)(i)(A), and TPDES General Permit No. TXR040213, Part IV.B.2.

Violation Description

Failed to submit the annual reports for years 2012 and 2013, as documented during an investigation conducted on October 1, 2015. Specifically, the Respondent failed to submit the annual reports for years 2012 and 2013 to the TCEQ within 90 days of the end of each permit year.

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 requirements were not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 2

1115 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$2,500

Two single events are recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/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 \$23

Violation Final Penalty Total \$2,250

This violation Final Assessed Penalty (adjusted for limits) \$2,250

# Economic Benefit Worksheet

**Respondent** City of Balch Springs  
**Case ID No.** 51590  
**Reg. Ent. Reference No.** RN105552640  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$100	1-Oct-2015	19-Aug-2016	0.88	\$4	n/a	\$4
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	11-Nov-2012	19-Aug-2016	3.77	\$19	n/a	\$19

Notes for DELAYED costs

The training/sampling delayed cost includes the estimated amount to implement procedures to ensure that reporting requirements are properly accomplished, including the timely submittal of annual reports, calculated from the investigation date to the estimated date of compliance.

The other delayed cost includes the estimated amount to prepare and submit the annual reports (\$50 per report x 2 reports) to the executive director, calculated from the due date of the earliest annual report to the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

**TOTAL**

\$23

The TCEQ is committed to accessibility.  
To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



## TCEQ Compliance History Report

**PUBLISHED** Compliance History Report for CN601189830, RN105552640, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

<b>Customer, Respondent, or Owner/Operator:</b>	CN601189830, City of Balch Springs	<b>Classification:</b>	HIGH	<b>Rating:</b>	0.00
<b>Regulated Entity:</b>	RN105552640, City of Balch Springs MS4	<b>Classification:</b>	HIGH	<b>Rating:</b>	0.00
<b>Complexity Points:</b>	1	<b>Repeat Violator:</b>	NO		
<b>CH Group:</b>	14 - Other				
<b>Location:</b>	WITHIN THE LIMITS OF THE CITY OF BALCH SPRINGS IN THE DALLAS URBANIZED AREA IN DALLAS COUNTY, TEXAS.				
<b>TCEQ Region:</b>	REGION 04 - DFW METROPLEX				

**Compliance History Period:** September 01, 2010 to August 31, 2015      **Rating Year:** 2015      **Rating Date:** 09/01/2015

**Date Compliance History Report Prepared:** November 24, 2015

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** November 24, 2010 to November 24, 2015

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Austin Henck      **Phone:** (512) 239-6155

### Site and Owner/Operator History:

- |  |     |
|--|-----|
| 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 <b>YES</b> for #2, who is the current owner/operator?  | N/A |
| 4) If <b>YES</b> for #2, who was/were the prior owner(s)/operator(s)?                              | N/A |
| 5) If <b>YES</b> , when did the change(s) in owner or operator occur?                              | N/A |

### Components (Multimedia) for the Site Are Listed in Sections A - J

**A. Final Orders, court judgments, and consent decrees:**

N/A

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

N/A

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

**F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF BALCH SPRINGS  
RN105552640

§ BEFORE THE  
§ TEXAS COMMISSION ON  
§ ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2015-1761-WQ-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 Balch Springs ("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 small municipal separate storm sewer system within the limits of the City of Balch Springs in the Dallas urbanized area in Dallas County, Texas (the "Site").
2. The Site adjoins, is contiguous with, surrounds, or is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
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 November 24, 2015.
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 Twenty-Two Thousand Five Hundred Dollars (\$22,500) is assessed by the Commission in settlement of the violations alleged

in Section II ("Allegations"). Four Thousand Five Hundred Dollars (\$4,500) 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. Eighteen Thousand Dollars (\$18,000) 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 Site, the Respondent is alleged to have:

1. Failed to maintain authorization to discharge stormwater under a Texas Pollutant Discharge Elimination System ("TPDES") General Permit for small separate storm sewer systems, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(a)(9)(i)(A), as documented during an investigation conducted on October 1, 2015. Specifically, TPDES General Permit No. TXR040213 expired on August 13, 2012, and a Notice of Intent ("NOI") and revised Stormwater Management Program ("SWMP") were not submitted by the application deadline date of June 11, 2014.
2. Failed to submit the annual reports for years 2012 and 2013, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4), 40 CODE OF FEDERAL REGULATIONS § 122.26(a)(9)(i)(A), and TPDES General Permit No. TXR040213, Part IV.B.2, as documented during an investigation conducted on October 1, 2015. Specifically, the Respondent failed to submit the annual reports for years 2012 and 2013 to the TCEQ within 90 days of the end of each permit year.

### 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 Balch Springs, Docket No. 2015-1761-WQ-E" to:

Financial Administration Division, Revenue Operations 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 an SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Eighteen Thousand Dollars (\$18,000) of the assessed administrative penalty shall be offset with the condition that the SEP defined in Attachment A, incorporated herein by reference, is implemented by the Respondent. The Respondent's obligation to pay the conditionally offset portion of the assessed administrative penalty 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. Immediately upon the effective date of this Agreed Order, until such time that authorization to discharge stormwater is obtained, or until 180 days after the effective date of this Agreed Order, whichever is earlier, comply with the permit requirements in expired TPDES General Permit No. TXR040213.

- b. Within 30 days after the effective date of this Agreed Order:

- i. Submit a completed NOI and revised SWMP to:

Stormwater and Pretreatment Team, MC 148  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- ii. Update the Facility's operational guidance and conduct employee training to ensure that reporting requirements are properly accomplished,

including the timely submittal of annual reports, in accordance with TPDES General Permit No. TXR040213, Part IV.B.2.

- iii. Submit the completed annual reports for years 2012 and 2013 to the executive director, in accordance with the requirements of TPDES General Permit No. TXR040213, Part IV.B.2.
- c. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 3.b.ii and 3.b.iii, in accordance with Ordering Provision No. 3.d.
- d. Within 180 days after the effective date of this Agreed Order, submit written certification that authorization to discharge stormwater has been obtained. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. 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  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

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 Site 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. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

\_\_\_\_\_  
Date

Carrie J. Marshall  
For the Executive Director

3/9/16  
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.

Carrie J. Marshall  
Signature

3-8-2016  
Date

Carrie J. Marshall  
Name (Printed or typed)  
Authorized Representative of  
City of Balch Springs

Mayor  
Title

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

**Attachment A**

**Docket Number: 2015-1761-WQ-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Table 1: Case Information**

<b>Respondent:</b>	City of Balch Springs
<b>Penalty Amount:</b>	Eighteen Thousand Dollars (\$18,000)
<b>SEP Offset Amount:</b>	Eighteen Thousand Dollars (\$18,000)
<b>Type of SEP:</b>	Custom
<b>Project Name:</b>	<i>Old Library Asbestos Abatement and Demolition</i>
<b>Location of SEP:</b>	Dallas 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 shall hire a contractor to remove asbestos and demolish the substandard structure, previously the Balch Springs Library, at 9317 Pioneer Road in Balch Springs, Dallas County, Texas. The recovered land will be incorporated into the surrounding parkland for public use. Asbestos removal and disposal will be performed by qualified contractors; those contractors will file the Texas Department of Health and Safety Notice of Asbestos Abatement and Demolition on behalf of the Respondent. The hired demolition contractor will obtain the permit for demolition. The demolition contractor will install a construction fence that will surround the site until demolition is complete.

Specifically, the SEP Offset Amount shall be used for materials, supplies, equipment, and engineering services for one or more of the following: removal of asbestos, transportation and disposal of asbestos, demolition of structure, demolition of the structure’s foundation, removal of debris, and project area construction fencing (the “Project”). Respondent shall solicit bids from qualified contractors to perform the work. Any advertisement, including publication, related to the SEP must include the enforcement statement as stated in Section 6, Publicity. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent shall use the SEP Offset Amount only for the direct cost of implementing the Project, 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 no prior commitment to perform this Project and that the SEP is being performed solely as part of the terms of settlement in this enforcement action.

**B. Environmental Benefit**

The SEP will provide a discernible environmental benefit by reducing the risk of asbestos exposure by properly removing asbestos and demolishing the substandard structure, previously the Balch Springs Library. Asbestos exposure can lead to serious health conditions, including lung cancer, mesothelioma, and asbestosis.

In addition, the cleared land will be absorbed by the adjacent park, providing recreational opportunities for the community.

**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**

<b>Item</b>	<b>Total</b>
Asbestos Abatement	
Remove Sprayed-on ceiling texture (approx. 2,000 sq. ft.)	
Remove 12 x 12 black floor mastic (approx. 2,000 sq. ft.)	
Remove drywall joint compound (approx. 5,000 sq. ft.)	\$10,897
Remove exterior caulk at windows/doors (approx. 1,000 sq. ft.)	
Manifest waste prior to offsite transportation and disposal	
Demolition of Structure and Foundation	
Demolition	\$7,928
Haul away	
Construction Fencing	\$950
<b>Total</b>	<b>\$19,775</b>

**2. Performance Schedule**

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

**3. Records and Reporting**

A. Progress Report

Within 30 days after the effective date of this Agreed Order, Respondent shall submit a Notice of Commencement to the TCEQ describing actions performed to date to implement the Project. Within 90 days of the effective date of this Agreed Order, Respondent shall submit a report detailing the progress made and all actions completed on the Project during the previous 60-day period and setting forth a schedule for achieving completion of the Project within the 365-day timeframe set forth in Section 2, Performance Schedule, above. Thereafter, Respondent shall submit progress reports to the TCEQ in 90-day increments containing detailed information on all actions completed on the Project to date as set forth in the Reporting Schedule table below:

**Table 2: Reporting Schedule**

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

B. Final Report

Within 30 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. Copies of proof of advertisement of invitation for bids, if applicable, (the publication must include the statement that the SEP was performed as a result of a TCEQ enforcement action);
4. A certified/notarized statement of quantifiable environmental benefit;
5. Detailed map showing specific locations of the asbestos abatement and

- demolition site(s);
6. Copies of all engineering plans related to work performed pursuant to the Project, if applicable;
  7. Dated photographs of the purchased materials and supplies; before and after work being performed during the asbestos abatement and demolition process; and of the completed Project;
  8. Any additional information Respondent believes will, or that is requested by TCEQ to demonstrate compliance with this Attachment A.;

C. Address

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

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

**4. Additional Information and Access**

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

**5. Failure to Fully Perform**

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

In the event the ED determines that Respondent failed to fully implement and complete the Project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. 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. Recognition**

Respondent may not seek recognition for this project 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.