

Executive Summary – Enforcement Matter – Case No. 44955

City of Newark

RN102287984

Docket No. 2012-1838-MWD-E

Order Type:

Findings Agreed Order

Findings Order Justification:

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

Media:

MWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

City of Newark WWTP, located on the east bank of Derrett Creek immediately south of the Newark Beach Road Bridge, about 850 feet west of the intersection of Roger Road and Berke Street, Wise County

Type of Operation:

Wastewater treatment facility

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: April 18, 2014

Comments Received: No

Penalty Information

Total Penalty Assessed: \$27,625

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$27,625

Name of SEP: Custom

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. 44955
City of Newark
RN102287984
Docket No. 2012-1838-MWD-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: July 18, 2012

Date(s) of NOE(s): August 7, 2012

Violation Information

1. Failed to comply with permitted effluent limitations for ammonia nitrogen, 5-day carbonaceous biochemical oxygen demand, dissolved oxygen, total suspended solids, and *E. coli* [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011626001, Interim I Effluent Limitations and Monitoring Requirements Nos. 1 and 6].
2. Failed to timely submit monitoring results at the intervals specified in the permit [30 TEX. ADMIN. CODE §§ 305.125(1) and (17) and 319.1, and TPDES Permit No. WQ0011626001, Monitoring and Reporting Requirements No. 1].
3. Failed to collect and analyze effluent for *E. coli* [30 TEX. ADMIN. CODE §§ 305.125(1) and 319.1 and 319.4, and TPDES Permit No. WQ0011626001, Monitoring and Reporting Requirements No. 1].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent has implemented the following corrective measures:

- a. In March 2012, the Respondent began analyzing effluent samples for *E. coli*; and
- b. On August 17, 2012, the Respondent submitted a revised discharge monitoring report ("DMR") containing the *E. coli* results for the monitoring period ending March 31, 2012.

Technical Requirements:

1. The Order will require the Respondent to implement and complete a Supplemental Environmental Project ("SEP"). (See SEP Attachment A)
2. The Order will also require the Respondent to:
 - a. Within 30 days, update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of accurate and complete DMRs;

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b. Within 45 days, submit written certification of compliance with Ordering Provision a.;
and

c. Within 90 days, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0011626001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reporting DMRs, 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: Jacquelyn Green, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2587; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456
TCEQ SEP Coordinator: Meaghan Bailey, SEP Coordinator, Litigation Division, MC 175, (512) 239-0205
Respondent: The Honorable Gary L. Van Wagner, Mayor, City of Newark, P.O. Box 156, Newark, Texas 76071
Respondent's Attorney: N/A

Attachment A
Docket Number: 2012-1838-MWD-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Newark
Penalty Amount:	Twenty-Seven Thousand Six Hundred Twenty-Five Dollars (\$27,625)
SEP Offset Amount:	Twenty-Seven Thousand Six Hundred Twenty-Five Dollars (\$27,625)
Type of SEP:	Custom
Project Name:	<i>Derrett Creek Erosion Control</i>
Location of SEP:	Wise County; Trinity River Basin

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 place multiple levels of stones along both sides of the creek bank located in the 500 block of Farm to Market Road 718, GPS coordinates Latitude 33.005528 and Longitude -97.488446. The west bank of Derrett Creek, a natural creek that flows in the southwest direction through Newark crossing under a bridge on FM 718, has substantial erosion that needs to be stabilized so that further damage to the environment does not occur. The soil has washed away causing tree roots along the bank to be exposed and weakened, allowing sediment to fall into the creek. The dimensions of the area to be stabilized with stones on the northwest side of the bank of Derrett Creek will be 50’ long, 75’ wide, 20’ deep and 48’ high. The dimensions of the area to be stabilized with stones on the southwest bank will be 15’ long, 58’ wide, 20’ deep, and 60’ high. Respondent shall solicit bids from qualified contractors to install the rock rip rap walls along both sides of Derrett Creek according to the above-referenced location and dimensions. Any advertisement, including solicitation for bids, 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

This SEP will provide a discernible environmental benefit by stabilizing the Derrett Creek banks and thus preventing or significantly reducing further erosion, sedimentation, siltation, and pooling of stagnant water downstream. Continued erosion will lead to high sediment loads, silting, and disruption of ecosystems in downstream waterways. The project will benefit and protect the water quality of Derrett Creek.

C. Minimum Expenditure

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

Estimated Cost Schedule

Item	Quantity	Cost	Units	Total
Contractor Estimate: 12" Rock Rip Rap Equipment Labor	1	\$30,000.00		\$30,000.00
Total				\$30,000.00

2. Performance Schedule

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

Days from Effective Order Date	Information Required
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 365 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. A certified/notarized statement of quantifiable environmental benefit;
4. Detailed map showing specific locations of the erosion site(s);
5. Dated photographs of the Project showing the progress and completion; and
6. 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 and 3 above, the Executive Director (“ED”) may require immediate payment of all or part of the SEP Offset Amount as set forth in the attached Agreed Order.

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

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

6. Publicity

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

7. Clean Texas Program

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

8. Other SEPs by TCEQ or Other Agencies

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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	20-Aug-2012	Screening	27-Aug-2012	EPA Due	
	PCW	11-Sep-2012				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Newark
Reg. Ent. Ref. No.	RN102287984
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	1
Enf./Case ID No.	44955	Order Type	Findings
Docket No.	2012-1838-MWD-E	Government/Non-Profit	Yes
Media Program(s)	Water Quality	Enf. Coordinator	Jacquelyn Green
Multi-Media		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

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

Compliance History	175.0% Enhancement	Subtotals 2, 3, & 7	\$1,750
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Notes: Enhancement for two NOVs with same/similar violations, 28 months of self-reported effluent violations, and one order without denial of liability.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$0; Approx. Cost of Compliance: \$0; *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,750
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$2,750
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,750
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$2,750
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Screening Date 27-Aug-2012

Docket No. 2012-1838-MWD-E

PCW

Respondent City of Newark

Policy Revision 2 (September 2002)

Case ID No. 44955

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102287984

Media [Statute] Water Quality

Enf. Coordinator Jacquelyn Green

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>)	30	150%
	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	1	25%
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) 175%

>> **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 same/similar violations, 28 months of self-reported effluent violations, and one order without denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 175%

Screening Date 27-Aug-2012

Docket No. 2012-1838-MWD-E

PCW

Respondent City of Newark

Policy Revision 2 (September 2002)

Case ID No. 44955

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102287984

Media [Statute] Water Quality

Enf. Coordinator Jacquelyn Green

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011626001, Interim I Effluent Limitations and Monitoring Requirements Nos. 1 and 6

Violation Description

Failed to comply with permitted effluent limitations, as documented in a record review conducted on July 18, 2012, and shown in the attached violation table.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 10%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

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

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1

62 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

One quarterly event is recommended for the quarter containing the months of May 2011 and July 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 \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$2,750

This violation Final Assessed Penalty (adjusted for limits) \$2,750

Economic Benefit Worksheet

Respondent City of Newark
Case ID No. 44955
Reg. Ent. Reference No. RN102287984
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

The economic benefit is included 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



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	20-Aug-2012	Screening	27-Aug-2012	EPA Due	
	PCW	11-Sep-2012				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Newark				
Reg. Ent. Ref. No.	RN102287984				
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	44955	No. of Violations	4
Docket No.	2012-1838-MWD-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Jacquelyn Green
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$12,750**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **100.0%** Enhancement **Subtotals 2, 3, & 7** **\$12,750**

Notes Enhancement for two NOVs with same/similar violations, 28 months of self-reported effluent violations, and one order without denial of liability.

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** **\$625**

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

Total EB Amounts **\$1,077**
 Approx. Cost of Compliance **\$10,325**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$24,875**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$24,875**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$24,875**

DEFERRAL **0.0%** Reduction **Adjustment** **\$0**

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

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$24,875**

Screening Date 27-Aug-2012

Docket No. 2012-1838-MWD-E

PCW

Respondent City of Newark

Policy Revision 3 (September 2011)

Case ID No. 44955

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102287984

Media [Statute] Water Quality

Enf. Coordinator Jacquelyn Green

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>)	30	150%
	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	1	25%
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) 175%

>> **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 same/similar violations, 28 months of self-reported effluent violations, and one order without denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 175%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 100%

Screening Date 27-Aug-2012

Docket No. 2012-1838-MWD-E

PCW

Respondent City of Newark

Policy Revision 3 (September 2011)

Case ID No. 44955

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102287984

Media [Statute] Water Quality

Enf. Coordinator Jacquelyn Green

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011626001, Interim I Effluent Limitations and Monitoring Requirements Nos. 1 and 6

Violation Description Failed to comply with permitted effluent limitations, as documented in a record review conducted on July 18, 2012, and shown in the attached violation table.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent 30.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

A simplified model was utilized to evaluate the values for carbonaceous biochemical oxygen demand (five-day) and ammonia nitrogen to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Total suspended solids, dissolved oxygen, and Escherichia coli ("E. coli") were also considered. As a result of these discharges, human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 1 Number of violation days 30

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

Violation Base Penalty \$7,500

One monthly event is recommended for the month of April 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 \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,012

Violation Final Penalty Total \$15,000

This violation Final Assessed Penalty (adjusted for limits) \$15,000

Economic Benefit Worksheet

Respondent City of Newark
Case ID No. 44955
Reg. Ent. Reference No. RN102287984
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)	\$10,000	31-May-2011	8-Jun-2013	2.02	\$1,012	n/a	\$1,012

Notes for DELAYED costs

Estimated cost to evaluate the cause of non-compliance and to implement corrective actions. Date required is the first date of non-compliance. Final date is the anticipated 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

\$10,000

TOTAL

\$1,012

Screening Date 27-Aug-2012

Docket No. 2012-1838-MWD-E

PCW

Respondent City of Newark

Policy Revision 3 (September 2011)

Case ID No. 44955

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102287984

Media [Statute] Water Quality

Enf. Coordinator Jacquelyn Green

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code §§ 305.125(1) and (17) and 319.1, and TPDES Permit No. WQ0011626001, Monitoring and Reporting Requirements No. 1

Violation Description

Failed to timely submit monitoring results at the intervals specified in the permit, as documented during a record review conducted on July 18, 2012. Specifically, the Respondent failed to include E. coli results on the discharge monitoring report ("DMR") for the monitoring period ending March 31, 2012.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
			x

Percent 1.0%

Matrix Notes

At least 70% of the permit requirement was met.

Adjustment \$24,750

\$250

Violation Events

Number of Violation Events 1

119 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$15

Violation Final Penalty Total \$500

This violation Final Assessed Penalty (adjusted for limits) \$500

Economic Benefit Worksheet

Respondent City of Newark
Case ID No. 44955
Reg. Ent. Reference No. RN102287984
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
<i>No commas or \$</i>							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$250	20-Apr-2012	8-Jun-2013	1.13	\$14	n/a	\$14
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)	\$25	20-Apr-2012	17-Aug-2012	0.33	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to update the Facility's operational guidance and to conduct employee training (\$250), and to prepare and submit the DMR. Date required is the date the DMR was due. Final dates are the estimated date of compliance to conduct employee training and the date the revised DMR was submitted.

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

\$275

TOTAL

\$15

Screening Date 27-Aug-2012

Docket No. 2012-1838-MWD-E

PCW

Respondent City of Newark

Policy Revision 3 (September 2011)

Case ID No. 44955

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102287984

Media [Statute] Water Quality

Enf. Coordinator Jacquelyn Green

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code §§ 305.125(1) and 319.1 and 319.4, and TPDES Permit No. WQ0011626001, Monitoring and Reporting Requirements No. 1

Violation Description

Failed to collect and analyze effluent for E. coli, as documented in a record review conducted on July 18, 2012. Specifically, effluent samples were not collected and analyzed for E. coli for the monitoring periods ending January 31, 2012 and February 29, 2012.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 2

59 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, one for each monitoring period ending January 31, 2012 and February 29, 2012.

Good Faith Efforts to Comply

25.0% Reduction

\$625

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

Notes

The Respondent began analyzing monthly effluent samples for E. coli in March 2012.

Violation Subtotal \$1,875

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$50

Violation Final Penalty Total \$4,375

This violation Final Assessed Penalty (adjusted for limits) \$4,375

Economic Benefit Worksheet

Respondent City of Newark
Case ID No. 44955
Reg. Ent. Reference No. RN102287984
Media Water Quality
Violation No. 3

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]	\$50	31-Jan-2012	29-Feb-2012	0.00	\$0	\$50	\$50
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to perform the sample analysis for *E. coli*. Date required is the date of the first non-compliance and the final date is the last month of non-compliance.

Approx. Cost of Compliance \$50

TOTAL \$50

Screening Date 27-Aug-2012

Docket No. 2012-1838-MWD-E

PCW

Respondent City of Newark

Policy Revision 3 (September 2011)

Case ID No. 44955

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102287984

Media [Statute] Water Quality

Enf. Coordinator Jacquelyn Green

Violation Number 4

Rule Cite(s)

Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0011626001, Interim I Effluent Limitations and Monitoring Requirements Nos. 1 and 6

Violation Description

Failed to comply with permitted effluent limitations, as documented in a record review conducted on July 18, 2012, and shown in the attached 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 utilized to evaluate the values for carbonaceous biochemical oxygen demand (five-day) and ammonia nitrogen to determine whether the discharged amounts of pollutants exceeded levels protective of human health or the environment. Total suspended solids were also considered. The amounts discharged at the time of the violations were insignificant and did not exceed levels that are protective of human health or the environment.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 2

124 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

Two quarterly events are recommended for the quarters containing the months of October 2011, December 2011, January 2012, and March 2012.

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 \$0

Violation Final Penalty Total \$5,000

This violation Final Assessed Penalty (adjusted for limits) \$5,000

Economic Benefit Worksheet

Respondent City of Newark
Case ID No. 44955
Reg. Ent. Reference No. RN102287984
Media Water Quality
Violation No. 4

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

Economic Benefit is included on Violation No 1.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

TOTAL

\$0

City of Newark
TPDES Permit No. WQ0011626001
Docket No. 2012-1838-MWD-E

	CBOD₅ Daily Avg. Conc.	CBOD₅ Daily Avg. Loading	<i>E. coli</i> Daily Avg. Conc.	<i>E. coli</i> Single Grab	NH₃-N Daily Avg. Conc.	NH₃-N Single Grab	NH₃-N Daily Avg. Loading	DO Min.	TSS Daily Avg. Conc.	TSS Daily Avg. Loading
Months:	Limit= 7 mg/L	Limit= 5.8 lbs/day	Limit= 126 CFU/ 100 mL	Limit= 394 CFU/ 100 mL	Limit= 2 mg/L	Limit= 15 mg/L	Limit= 1.7 lbs/day	Limit= 6 mg/L	Limit= 15 mg/L	Limit= 13 lbs/day
May 2011	c	c	N/A	N/A	c	c	c	c	21	15
July 2011	c	c	N/A	N/A	c	c	c	5.8	c	c
October 2011	c	c	N/A	N/A	c	c	c	c	18	c
December 2011	7.1	c	c	c	4.3	c	3	c	c	c
January 2012	c	c	*	*	2.6	c	2.3	c	c	c
March 2012	7.2	c	c	c	<2.9	c	<2.8	c	24	15
April 2012	17	12	>2,400	2,400	19	39	13	2.7	<18	c

NH₃-N = Ammonia Nitrogen

CBOD₅ = Carbonaceous Biochemical Oxygen Demand (Five-day)

TSS = Total Suspended Solids

DO = Dissolved Oxygen

E. coli = *Escherichia coli*

CFU/100 mL = Colony Forming Units Per 100
Milliliters

Conc. = Concentration

Avg. = Average

lbs/day = Pounds Per Day

mg/L = Milligrams per Liter

c = Compliant

* = Not Analyzed

N/A = Not Applicable

> = Greater Than

< = Less Than

Min. = Minimum



Compliance History Report

PUBLISHED Compliance History Report for CN600342091, RN102287984, Rating Year 2011 which includes Compliance History (CH) components from September 1, 2006, through August 31, 2011.

Customer, Respondent, or Owner/Operator:	CN600342091, City of Newark	Classification:	AVERAGE	Rating:	3.54
Regulated Entity:	RN102287984, CITY OF NEWARK WASTEWATER TREATMENT PLANT	Classification:	AVERAGE	Rating:	4.07
Complexity Points:	0	Repeat Violator:	NO		
CH Group:	08 - Sewage Treatment Facilities				
Location:	Located on the east bank of Derrett Creek immediately south of the Newark Beach Road Bridge, about 850 feet west of the intersection of Roger Road and Berke Street, Wise County, Texas				
TCEQ Region:	REGION 04 - DFW METROPLEX				
ID Number(s):					
WASTEWATER PERMIT	WQ0011626001	WASTEWATER EPA ID	TX0057231		
WASTEWATER LICENSING LICENSE	WQ0011626001				
Compliance History Period:	September 01, 2006 to August 31, 2011	Rating Year:	2011	Rating Date:	09/01/2011
Date Compliance History Report Prepared:	October 09, 2012				
Agency Decision Requiring Compliance History:	Enforcement				
Component Period Selected:	August 31, 2007 to August 31, 2012				
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.					
Name:	Jacquelyn Green	Phone:	(512) 239-2587		

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 YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, 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

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

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

- 1 Effective Date: 06/15/2009 ADMINORDER 2007-1065-MWD-E (Findings Order)
 - Classification: Moderate
 - Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 305, SubChapter F 305.125(1)
 - Rqmt Prov: EL&MR Nos. 1 and 6 PERMIT
Not specified ORDER
 - Description: Failure to comply with permitted effluent limits.
 - Classification: Moderate
 - Citation: 30 TAC Chapter 305, SubChapter F 305.125(17)
 - Rqmt Prov: Effluent Limits PERMIT
 - Description: Failing to timely submit DMRs for February, September, October, November, and December 2006 as well as January 2007.
 - Classification: Moderate
 - Citation: 30 TAC Chapter 305, SubChapter F 305.125(17)
 - Rqmt Prov: Self-reporting Requirements PERMIT
 - Description: Failure to submit monitoring results at the intervals specified in the permit as documented by a TCEQ record review.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1	November 29, 2007	(622193)
Item 2	January 02, 2008	(673964)
Item 3	March 27, 2008	(692233)
Item 4	May 31, 2008	(569804)
Item 5	October 16, 2008	(713339)
Item 6	October 31, 2008	(729419)
Item 7	December 29, 2008	(729420)
Item 8	July 17, 2009	(810415)
Item 9	August 19, 2009	(810416)
Item 10	October 16, 2009	(810418)
Item 11	December 21, 2009	(810420)
Item 12	January 20, 2010	(810421)
Item 13	February 22, 2010	(810412)
Item 14	April 15, 2010	(832895)
Item 15	May 20, 2010	(832896)
Item 16	June 17, 2010	(846901)
Item 17	August 05, 2010	(867629)
Item 18	September 14, 2010	(867628)
Item 19	September 20, 2010	(874618)
Item 20	October 18, 2010	(882182)
Item 21	November 22, 2010	(888662)
Item 22	December 17, 2010	(897014)
Item 23	January 24, 2011	(902932)
Item 24	March 03, 2011	(917029)
Item 25	March 14, 2011	(917030)
Item 26	April 20, 2011	(927164)
Item 27	May 23, 2011	(938732)
Item 28	July 21, 2011	(953366)
Item 29	September 22, 2011	(966053)
Item 30	October 21, 2011	(972080)
Item 31	December 14, 2011	(985045)
Item 32	March 16, 2012	(1004205)

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.

1	Date:	08/31/2007	(603604)	CN600342091	
	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			
2	Date:	09/30/2007	(622192)	CN600342091	
	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			
3	Date:	11/16/2007	(595924)	CN600342091	
	Self Report?	NO		Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)			
	Description:	Failure to adhere to permitted effluent limits			
	Self Report?	NO		Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(5)			

	Description:	30 TAC Chapter 317 317.4(g) Failure to maintain concrete wall structures within oxidation ditch.		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(5) 30 TAC Chapter 317 317.4(d)		
	Description:	Failure to maintain clarifier unit.		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 317 317.4(a)(8)		
	Description:	Failure to have the backflow prevention device (RPZ) tested annually.		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(11)(B) 30 TAC Chapter 305, SubChapter F 305.125(11)(C)		
	Description:	Failure to submit the 2005-2006 and 2006-2007 annual sludge reports.		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) Monitoring and Reporting Requirements PERMIT		
	Description:	Failure to maintain the required sludge management records.		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 319, SubChapter A 319.7(c) Monitoring and Reporting Requirements PERMIT		
	Description:	Failure to maintain effluent monitoring records.		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description:	Failure to document that effluent loadings are calculated correctly.		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) Monitoring and Reporting Requirements PERMIT		
	Description:	Failure to provide notification of effluent permit limit violations.		
4	Date:	12/31/2007 (673965)	CN600342091	
	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		
5	Date:	01/31/2008 (673963)	CN600342091	
	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		
6	Date:	03/31/2008 (692234)	CN600342091	
	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		
7	Date:	04/30/2008 (692235)	CN600342091	
	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		
8	Date:	05/31/2008 (713335)	CN600342091	
	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		
9	Date:	06/30/2008 (713336)	CN600342091	
	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		
10	Date:	07/31/2008 (713337)	CN600342091	
	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		
11	Date:	08/31/2008 (713338)	CN600342091	
	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		
12	Date:	12/31/2008 (752633)	CN600342091	
	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		
13	Date:	01/31/2009 (752632)	CN600342091	
	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		
14	Date:	02/28/2009 (770304)	CN600342091	
	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		
15	Date:	03/31/2009 (770305)	CN600342091	
	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		
16	Date:	04/30/2009 (810413)	CN600342091	
	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		
17	Date:	05/31/2009 (810414)	CN600342091	
	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		
18	Date:	08/31/2009 (810417)	CN600342091	
	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		
19	Date:	10/31/2009 (810419)	CN600342091	
	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		
20	Date:	01/29/2010 (786092)	CN600342091	
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 319, SubChapter A 319.7(c) Monitoring and Reporting Requirements PERMIT		
	Description:	Failure to maintain effluent monitoring records.		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description:	Failure to document that effluent loadings are calculated correctly.		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		

		30 TAC Chapter 305, SubChapter F 305.125(5) Operational Requirements PERMIT		
	Description:	Failure to provide adequate safeguards to prevent the discharge of untreated waste during electric power failures.		
	Self Report?	NO	Classification:	Moderate
	Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 2D TWC Chapter 26, SubChapter A 26.121(a)(1) 2D TWC Chapter 26, SubChapter A 26.121(a)(3) 2D TWC Chapter 26, SubChapter A 26.121(b) 2D TWC Chapter 26, SubChapter A 26.121(c) 2D TWC Chapter 26, SubChapter A 26.121(d) 2D TWC Chapter 26, SubChapter A 26.121(e) 30 TAC Chapter 305, SubChapter F 305.125(4) 30 TAC Chapter 305, SubChapter F 305.125(5) TWC Chapter 26 26.121 TWC Chapter 26 26.121(a)(2)		
	Description:	Failure to prevent the unauthorized discharge of wastewater from the collection system.		
	Self Report?	NO	Classification:	Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)		
	Description:	Failure to maintain compliance with the permitted effluent limits.		
21	Date:	02/28/2010 (832894)	CN600342091	
	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		
22	Date:	05/31/2011 (946105)	CN600342091	
	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		
23	Date:	07/31/2011 (960005)	CN600342091	
	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		
24	Date:	10/31/2011 (978241)	CN600342091	
	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		
25	Date:	12/31/2011 (991319)	CN600342091	
	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		
26	Date:	01/31/2012 (1004204)	CN600342091	
	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		
27	Date:	03/31/2012 (1017137)	CN600342091	
	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		
28	Date:	04/30/2012 (1017138)	CN600342091	
	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		

29 Date: 05/31/2012 (1024922) CN600342091
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

30 Date: 06/30/2012 (1032272) CN600342091
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
CITY OF NEWARK
RN102287984**

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

**AGREED ORDER
DOCKET NO. 2012-1838-MWD-E**

At its _____ agenda, the Texas Commission on Environmental Quality (“the Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding the City of Newark (“Respondent”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

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

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

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

I. FINDINGS OF FACT

1. The Respondent owns and operates a wastewater treatment facility located on the east bank of Derrett Creek immediately south of the Newark Beach Road Bridge, about 850 feet west of the intersection of Roger Road and Berke Street, Wise 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. During a record review on July 18, 2012, TCEQ staff documented the following from self-reported monthly discharge monitoring reports (“DMRs”):

Months:	CBOD ₅ Daily Avg. Conc.	CBOD ₅ Daily Avg. Loading	E. coli Daily Avg. Conc.	E. coli Single Grab	NH ₃ -N Daily Avg. Conc.	NH ₃ -N Single Grab	NH ₃ -N Daily Avg. Loading	DO Min.	TSS Daily Avg. Conc.	TSS Daily Avg. Loading
	Limit= 7 mg/L	Limit= 5.8 lbs/day	Limit= 126 CFU/100 mL	Limit= 394 CFU/100 mL	Limit= 2 mg/L	Limit= 15 mg/L	Limit= 1.7 lbs/day	Limit= 6 mg/L	Limit= 15 mg/L	Limit= 13 lbs/day
May 2011	c	c	N/A	N/A	c	c	c	c	21	15
July 2011	c	c	N/A	N/A	c	c	c	5.8	c	c
October 2011	c	c	N/A	N/A	c	c	c	c	18	c
December 2011	7.1	c	c	c	4.3	c	3	c	c	c
January 2012	c	c	*	*	2.6	c	2.3	c	c	c
March 2012	7.2	c	c	c	<2.9	c	<2.8	c	24	15
April 2012	17	12	>2,400	2,400	19	39	13	2.7	<18	c

NH₃-N = Ammonia Nitrogen
CBOD₅= Carbonaceous Biochemical Oxygen Demand (Five-day)
TSS = Total Suspended Solids
DO = Dissolved Oxygen
E. coli = *Escherichia coli*
CFU/100 mL = Colony Forming Units Per 100 Milliliters
Conc. = Concentration
Avg. = Average

lbs/day = Pounds Per Day
mg/L = Milligrams per Liter
c = Compliant
* = Not Analyzed
N/A = Not Applicable
> = Greater Than
< = Less Than
Min. = Minimum

4. During a record review on July 18, 2012, TCEQ staff documented that the Respondent failed to include *E. coli* results on the DMR for the monitoring period ending March 31, 2012.
5. During a record review on July 18, 2012, TCEQ staff documented that the Respondent failed to collect and analyze effluent for *E. coli* for the monitoring periods ending January 31, 2012 and February 29, 2012.
6. The Respondent received notice of the violations on August 13, 2012.
7. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. In March 2012, the Respondent began analyzing effluent samples for *E. coli*; and

- b. On August 17, 2012, the Respondent submitted a revised DMR containing the *E. coli* results for the monitoring period ending March 31, 2012.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to comply with permitted effluent limitations, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0011626001, Interim I Effluent Limitations and Monitoring Requirements Nos. 1 and 6.
3. As evidenced by Findings of Fact No. 4, the Respondent failed to timely submit monitoring results at the intervals specified in the permit, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and (17) and 319.1, and TPDES Permit No. WQ0011626001, Monitoring and Reporting Requirements No. 1.
4. As evidenced by Findings of Fact No. 5, the Respondent failed to collect and analyze effluent for *E. coli*, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1) and 319.1 and 319.4, and TPDES Permit No. WQ0011626001, Monitoring and Reporting Requirements No. 1.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of Twenty-Seven Thousand Six Hundred Twenty-Five Dollars (\$27,625) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX WATER CODE § 7.053. Twenty-Seven Thousand Six Hundred Twenty-Five Dollars (\$27,625) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Twenty-Seven Thousand Six Hundred Twenty-Five Dollars (\$27,625) as set forth in Section II,

Paragraph 6 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Newark, Docket No. 2012-1838-MWD-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 6 above, Twenty-Seven Thousand Six Hundred Twenty-Five Dollars (\$27,625) of the assessed administrative penalty shall be offset with the condition that the Respondent implements the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of accurate and complete DMRs, in accordance with 30 TEX. ADMIN. CODE § 305.125(17) and TPDES Permit No. WQ0011626001, Monitoring and Reporting Requirements No. 1;
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 3.a, in accordance with Ordering Provision No. 3.d below;
 - c. Within 90 days after the effective date of this Agreed Order, submit written certification of compliance with the permitted effluent limitations of TPDES Permit No. WQ0011626001, including specific corrective actions that were implemented at the Facility to achieve compliance and copies of the most current self-reporting DMRs, demonstrating at least three consecutive months of compliance with all permitted effluent limitations. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance, in accordance with Ordering Provision No. 3.d below; and

- d. The certifications required by Ordering Provisions Nos. 3.b and 3.c 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 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. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
8. 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.
9. 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.
10. 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.
11. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pamela Meyer
For the Executive Director

6/20/14
Date

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

I understand that by entering into this Agreed Order, the City of Newark waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Gary L. Van Wagner
Signature

MARCH 21, 2014
Date

GARY L. VAN WAGNER
Name (Printed or typed)
Authorized Representative of
City of Newark

MAYOR
Title

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

Attachment A
Docket Number: 2012-1838-MWD-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Newark
Penalty Amount:	Twenty-Seven Thousand Six Hundred Twenty-Five Dollars (\$27,625)
SEP Offset Amount:	Twenty-Seven Thousand Six Hundred Twenty-Five Dollars (\$27,625)
Type of SEP:	Custom
Project Name:	<i>Derrett Creek Erosion Control</i>
Location of SEP:	Wise County; Trinity River Basin

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 place multiple levels of stones along both sides of the creek bank located in the 500 block of Farm to Market Road 718, GPS coordinates Latitude 33.005528 and Longitude -97.488446. The west bank of Derrett Creek, a natural creek that flows in the southwest direction through Newark crossing under a bridge on FM 718, has substantial erosion that needs to be stabilized so that further damage to the environment does not occur. The soil has washed away causing tree roots along the bank to be exposed and weakened, allowing sediment to fall into the creek. The dimensions of the area to be stabilized with stones on the northwest side of the bank of Derrett Creek will be 50’ long, 75’ wide, 20’ deep and 48’ high. The dimensions of the area to be stabilized with stones on the southwest bank will be 15’ long, 58’ wide, 20’ deep, and 60’ high. Respondent shall solicit bids from qualified contractors to install the rock rip rap walls along both sides of Derrett Creek according to the above-referenced location and dimensions. Any advertisement, including solicitation for bids, 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

This SEP will provide a discernible environmental benefit by stabilizing the Derrett Creek banks and thus preventing or significantly reducing further erosion, sedimentation, siltation, and pooling of stagnant water downstream. Continued erosion will lead to high sediment loads, silting, and disruption of ecosystems in downstream waterways. The project will benefit and protect the water quality of Derrett Creek.

C. Minimum Expenditure

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

Estimated Cost Schedule

Item	Quantity	Cost	Units	Total
Contractor Estimate: 12" Rock Rip Rap Equipment Labor	1	\$30,000.00		\$30,000.00
Total				\$30,000.00

2. Performance Schedule

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

Days from Effective Order Date	Information Required
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 365 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. A certified/notarized statement of quantifiable environmental benefit;
4. Detailed map showing specific locations of the erosion site(s);
5. Dated photographs of the Project showing the progress and completion; and
6. 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 and 3 above, the Executive Director (“ED”) may require immediate payment of all or part of the SEP Offset Amount as set forth in the attached Agreed Order.

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

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

6. Publicity

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

7. Clean Texas Program

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

8. Other SEPs by TCEQ or Other Agencies

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