

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0971-WQ-E **TCEQ ID:** RN105135636 **CASE NO.:** 33870

RESPONDENT NAME: City of Temple

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Temple Collection System, located at the corner of North 34th Street and Highway 53, a manhole located at 2402 South 61st Street, and a manhole located at the corner of Melrose Lane and Wagon Trail, Temple, Bell County</p> <p>TYPE OF OPERATION: Wastewater collection system</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: Complaints were received on December 26 and December 31, 2006 and January 30, 2007, concerning a broken sewer line and an overflowing manhole. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: Complaints were received, but the complainants have not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on October 8, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Lynley Doyen, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-1364; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: The Honorable William A. Jones, III, Mayor, City of Temple, 2 North Main Street, Temple, Texas 76501 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: December 26 and December 31, 2006 and January 30, 2007</p> <p>Date of Investigation Relating to this Case: December 28, 2006, January 31, February 23, and June 19, 2007</p> <p>Date of NOV/NOE Relating to this Case: April 3, April 26, and June 12, 2007 (NOEs)</p> <p>Background Facts: These were complaint investigations and a record review. Four violations were documented.</p> <p>WATER</p> <p>1) Failed to prevent and mitigate the unauthorized discharge and accumulation of sludge in the receiving stream. Specifically, the investigator observed a ruptured collection sewer line located on the north bank of an unnamed tributary of Little Elm Creek, at the corner of North 34th Street and Highway 53. Wastewater was discharging from the line directly into the creek and blackish brown sludge was present from the point of discharge to a distance of approximately 50 yards downstream [TEX. WATER CODE § 26.121(a)].</p> <p>2) Failed to prevent and mitigate the unauthorized discharge and accumulation of sludge in the receiving stream. Specifically, the investigator observed evidence of a discharge from a manhole located at 2402 South 61st Street. An accumulation of sludge and debris was visible leading from the manhole to a distance of approximately 20 yards downstream of Bird Creek [TEX. WATER CODE § 26.121(a)].</p> <p>3) Failed to notify the TCEQ of an unauthorized discharge. Specifically, a review of the service call logs revealed that</p>	<p>Total Assessed: \$6,300</p> <p>Total Deferred: \$1,260 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$5,040</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>1) The Executive Director recognizes that the City has implemented the following corrective measures at the Sites:</p> <p>a. On or before February 1, 2007, repaired the collection line located at the corner of North 34th Street and Highway 53, vacuumed and properly disposed of the sludge in the tributary, and cleaned and disinfected the affected area;</p> <p>b. On or before February 28, 2007, flushed the collection line to remove the blockage at the manhole located at 2402 South 61st Street, removed and properly disposed of the sludge and debris in Bird Creek, and cleaned and disinfected the affected area; and</p> <p>c. On or before June 19, 2007, updated operational guidance and conducted employee training to ensure that the protocol for reporting unauthorized discharges is followed.</p> <p>Ordering Provisions:</p> <p>2) The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, submit payment for all outstanding fees, including any associated penalties and interest; and</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.</p>

the City failed to notify TCEQ for an unauthorized discharge that occurred on December 24, 2006 from a manhole located at the corner of Melrose Lane and Wagon Trail [TEX. WATER CODE § 26.039(b)].

4) Failed to pay outstanding General Permits Stormwater fees and associated late fees for TCEQ Account No. 20009879 for Fiscal Year 2007 [TEX. WATER CODE §§ 5.702 and 26.0291 and 30 TEX. ADMIN. CODE § 205.6].

Additional ID No(s): None



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 25, 2007

DATES	Assigned	11-Jun-2007	Screening	19-Jun-2007	EPA Due	
	PCW	19-Jun-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Temple
Reg. Ent. Ref. No.	RN105135636
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	33870	No. of Violations	4
Docket No.	2007-0971-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Lynley Doyen
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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 5% Enhancement Subtotals 2, 3, & 7

Notes

Culpability No 0% Enhancement Subtotal 4

Notes

Good Faith Effort to Comply 0% Reduction Subtotal 5

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

Notes

Total EB Amounts Subtotal 6
 Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Reduction Adjustment

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

Notes

PAYABLE PENALTY

Screening Date 19-Jun-2007

Docket No. 2007-0971-WQ-E

PCW

Respondent City of Temple

Policy Revision 2 (September 2002)

Case ID No. 33870

PCW Revision May 25, 2007

Reg. Ent. Reference No. RN105135636

Media [Statute] Water Quality

Enf. Coordinator Lynley Doyen

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgments or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	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) 5%

>> 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

The penalty is enhanced due to one NOV with violations same or similar to those cited in this action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 19-Jun-2007	Docket No. 2007-0971-WQ-E	PCW												
Respondent City of Temple		<i>Policy Revision 2 (September 2002)</i>												
Case ID No. 33870		<i>PCW Revision May 25, 2007</i>												
Reg. Ent. Reference No. RN105135636														
Media [Statute] Water Quality														
Enf. Coordinator Lynley Doyen														
Violation Number <input type="text" value="1"/>														
Rule Cite(s)	Tex. Water Code § 26.121(a)													
Violation Description	Failed to prevent and mitigate the unauthorized discharge and accumulation of sludge in the receiving stream. Specifically, on January 31, 2007, the investigator observed a ruptured collection sewer line located on the north bank of an unnamed tributary of Little Elm Creek, at the corner of North 34th Street and Highway 53. Wastewater was discharging from the line directly into the creek and blackish brown sludge was present from the point of discharge to a distance of approximately 50 yards downstream.													
	Base Penalty	<input type="text" value="\$10,000"/>												
>> Environmental, Property and Human Health Matrix														
OR	Harm													
	Release Major Moderate Minor													
	Actual <input type="text"/> <input checked="" type="text"/> <input type="text"/>	Percent <input type="text" value="25%"/>												
Potential <input type="text"/> <input type="text"/> <input type="text"/>														
>> Programmatic Matrix														
	Falsification Major Moderate Minor													
	<input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>	Percent <input type="text" value="0%"/>												
Matrix Notes	Human health or the environment has been exposed to significant amounts of pollutants as a result of the unauthorized discharge.													
	Adjustment	<input type="text" value="\$7,500"/>												
		<input type="text" value="\$2,500"/>												
Violation Events														
	Number of Violation Events <input type="text" value="1"/>	<input type="text" value="1"/> Number of violation days												
<i>mark only one with an x</i>	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input checked="" type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input type="text"/></td></tr> </table>	daily	<input type="text"/>	monthly	<input checked="" type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>	Violation Base Penalty <input type="text" value="\$2,500"/>
daily	<input type="text"/>													
monthly	<input checked="" type="text"/>													
quarterly	<input type="text"/>													
semiannual	<input type="text"/>													
annual	<input type="text"/>													
single event	<input type="text"/>													
	One monthly event is recommended from the investigation date (January 31, 2007) to the date of compliance (February 1, 2007).													
Economic Benefit (EB) for this violation														
	Estimated EB Amount <input type="text" value="\$0"/>	Statutory Limit Test												
		Violation Final Penalty Total <input type="text" value="\$2,625"/>												
	This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$2,625"/>													

Economic Benefit Worksheet

Respondent City of Temple
Case ID No. 33870
Reg. Ent. Reference No. RN105135636
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$2,500	31-Jan-2007	1-Feb-2007	0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Amount the City spent to remediate the receiving stream and complete repairs on the collection system. Date required is the investigation date. Final date is the date compliance was achieved.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$2,500

TOTAL \$0

Screening Date 19-Jun-2007	Docket No. 2007-0971-WQ-E	PCW
Respondent City of Temple		<small>Policy Revision 2 (September 2002)</small>
Case ID No. 33870		<small>PCW Revision May 25, 2007</small>
Reg. Ent. Reference No. RN105135636		
Media [Statute] Water Quality		
Enf. Coordinator Lynley Doyen		
Violation Number <input type="text" value="2"/>		
Rule Cite(s)	Tex. Water Code § 26.121(a)	
Violation Description	Failed to prevent and mitigate the unauthorized discharge and accumulation of sludge in the receiving stream. Specifically, on February 23, 2007, the investigator observed evidence of a discharge from a manhole located at 2402 South 61st Street. An accumulation of sludge and debris was visible leading from the manhole to a distance of approximately 20 yards downstream of Bird Creek.	
	Base Penalty	<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="25%"/>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

<small>mark only one with an x</small>	daily	<input type="text"/>
	monthly	<input checked="" type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

One monthly event is recommended from the investigation date (February 23, 2007) to the date of compliance (February 28, 2007).

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent City of Temple
Case ID No. 33870
Reg. Ent. Reference No. RN105135636
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
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$910	23-Feb-2007	28-Feb-2007	0.0	\$1	n/a	\$1
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Amount the City spent to remediate the receiving stream and complete repairs on the collection system. Date required is the investigation date. Final date is the date compliance was achieved.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$910

TOTAL

\$1

Screening Date 19-Jun-2007	Docket No. 2007-0971-WQ-E	PCW		
Respondent City of Temple		<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 33870		<small>PCW Revision May 25, 2007</small>		
Reg. Ent. Reference No. RN105135636				
Media [Statute] Water Quality				
Enf. Coordinator Lynley Doyen				
Violation Number <input type="text" value="3"/>				
Rule Cite(s)	Tex. Water Code § 26.039(b)			
Violation Description	Failed to notify the TCEQ of an unauthorized discharge. Specifically, a review of the service call logs revealed that the City failed to notify TCEQ for an unauthorized discharge that occurred on December 24, 2006 from a manhole located at the corner of Melrose Lane and Wagon Trail.			
	Base Penalty	<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
			Percent	<input type="text" value="0%"/>
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	x	<input type="text"/>	<input type="text"/>
			Percent	<input type="text" value="10%"/>
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>			
			Adjustment	<input type="text" value="\$9,000"/>
				<input type="text" value="\$1,000"/>
Violation Events				
	Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="176"/>	Number of violation days
<small>mark only one with an x</small>	daily	<input type="text"/>		Violation Base Penalty <input type="text" value="\$1,000"/>
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text" value="x"/>		
	<input type="text" value="One single event is recommended."/>			
Economic Benefit (EB) for this violation			Statutory Limit Test	
	Estimated EB Amount	<input type="text" value="\$6"/>	Violation Final Penalty Total	<input type="text" value="\$1,050"/>
	This violation Final Assessed Penalty (adjusted for limits)			<input type="text" value="\$1,050"/>

Economic Benefit Worksheet

Respondent City of Temple
Case ID No. 33870
Reg. Ent. Reference No. RN105135636
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling	\$250	25-Dec-2006	19-Jun-2007	0.5	\$6	n/a	\$6
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to update operational guidance and conduct employee training on proper notification procedures. Date required is the date notification was due. Final date is the date compliance was achieved.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$25	25-Dec-2006	28-Dec-2006	0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to submit notification of an unauthorized discharge. Date required is the date notification was due. Final date is the investigation date.

Approx. Cost of Compliance \$275

TOTAL \$6

<p>Screening Date 19-Jun-2007</p> <p>Respondent City of Temple</p> <p>Case ID No. 33870</p> <p>Reg. Ent. Reference No. RN105135636</p> <p>Media [Statute] Water Quality</p> <p>Enf. Coordinator Lynley Doyen</p> <p>Violation Number <input type="text" value="4"/></p> <p>Rule Cite(s) <input type="text" value="Tex. Water Code §§ 5.702 and 26.0291 and 30 Tex. Admin. Code § 205.6"/></p> <p>Violation Description <input type="text" value="Failed to pay outstanding General Permits Stormwater fees and associated late fees for TCEQ Account No. 20009879 for Fiscal Year 2007."/></p>	<p>Docket No. 2007-0971-WQ-E</p> <p style="text-align: right;">PCW</p> <p style="text-align: right;"><small>Policy Revision 2 (September 2002)</small></p> <p style="text-align: right;"><small>PCW Revision May 25, 2007</small></p>																			
Base Penalty <input type="text" value="\$10,000"/>																				
>> Environmental, Property and Human Health Matrix																				
<p>OR</p>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="text-align: center;">Release</td> <td colspan="3" style="text-align: center;">Harm</td> <td></td> </tr> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td>Actual</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="text-align: right;">Percent <input type="text" value="0%"/></td> </tr> <tr> <td>Potential</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> </tr> </table>	Release	Harm					Major	Moderate	Minor		Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
Release	Harm																			
	Major	Moderate	Minor																	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>																
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>																	
>> Programmatic Matrix																				
	<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td></td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Minor</td> <td></td> </tr> <tr> <td>Falsification</td> <td><input type="text"/></td> <td><input type="text"/></td> <td><input type="text"/></td> <td rowspan="2" style="text-align: right;">Percent <input type="text" value="0%"/></td> </tr> <tr> <td>Matrix Notes</td> <td colspan="3"><input type="text"/></td> </tr> </table>		Major	Moderate	Minor		Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>	Matrix Notes	<input type="text"/>							
	Major	Moderate	Minor																	
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Violation Events																				
<p>Number of Violation Events <input type="text"/></p> <p>Number of violation days <input type="text"/></p> <p><small>mark only one with an x</small></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input type="text"/></td></tr> </table>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>	Violation Base Penalty <input type="text" value="\$0"/>							
daily	<input type="text"/>																			
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semiannual	<input type="text"/>																			
annual	<input type="text"/>																			
single event	<input type="text"/>																			
<p>No penalty is recommended because fees and interest will be assessed at the next billing cycle.</p>																				
Economic Benefit (EB) for this violation																				
Statutory Limit Test																				
Estimated EB Amount <input type="text" value="\$0"/>	Violation Final Penalty Total <input type="text" value="\$0"/>																			
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$0"/>																				

Economic Benefit Worksheet

Respondent City of Temple
Case ID No. 33870
Reg. Ent. Reference No. RN105135636
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
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

N/A

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

N/A

Approx. Cost of Compliance \$0

TOTAL \$0

Compliance History

Customer/Respondent/Owner-Operator: CN600245799 City of Temple Classification: AVERAGE Rating: 1.66
Regulated Entity: RN105135636 CITY OF TEMPLE Classification: AVERAGE Site Rating: 1.00
COLLECTION SYSTEM
ID Number(s):
Location: 3210 E AVE H, TEMPLE, BELL CO, TX Rating Date: September 01 06
CORNER OF N 34TH ST & HWY 53 Repeat Violator: NO
2402 S 61ST ST
TCEQ Region: REGION 09 - WACO
Date Compliance History Prepared: June 14, 2007
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 14, 2002 to June 14, 2007
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Lynley Doyen Phone: 512-239-1364

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 08/18/2006 (486980)
2 02/15/2007 (532268)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 05/30/2006 (464825)

Self Report? NO Classification: Minor
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
30 TAC Chapter 305, SubChapter F 305.125(4)
Description: Failure by the permittee to prevent the discharge of wastewater into or adjacent to water in the state without authorization from the Commission.

Self Report? NO Classification: Minor
Citation: 2D TWC Chapter 26, SubChapter A 26.039(b)
30 TAC Chapter 305, SubChapter F 305.125(9)(A)
Rqmt Prov: PERMIT WQ0010470-002
Description: Failure by the permittee to orally notify the TCEQ of an unauthorized discharge within 24 hours and submit written notification within 5 days.

- 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 TEMPLE
RN105135636

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-0971-WQ-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Temple ("the City") under the authority of TEX. WATER CODE chs. 5, 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a wastewater collection system line located at the corner of North 34th Street and Highway 53, Temple, Bell County, Texas, a manhole located at 2402 South 61st Street, Temple, Bell County, Texas, and a manhole located at the the corner of Melrose Lane and Wagon Trail, Temple, Bell County, Texas (the "Sites").
2. The City has discharged sewage into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notices of the violations alleged in Section II ("Allegations") on or about April 8, 2007, May 1, 2007, and June 17, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Six Thousand Three Hundred Dollars (\$6,300) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations").

The City has paid Five Thousand Forty Dollars (\$5,040) of the administrative penalty and One Thousand Two Hundred Sixty Dollars (\$1,260) is deferred contingent upon the City'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 City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty.

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 of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the City has implemented the following corrective measures at the Sites:
 - a. On or before February 1, 2007, repaired the collection line located at the corner of North 34th Street and Highway 53, vacuumed and properly disposed of the sludge in the tributary, and cleaned and disinfected the affected area;
 - b. On or before February 28, 2007, flushed the collection line to remove the blockage at the manhole located at 2402 South 61st Street, removed and properly disposed of the sludge and debris in Bird Creek, and cleaned and disinfected the affected area; and
 - c. On or before June 19, 2007, updated operational guidance and conducted employee training to ensure that the protocol for reporting unauthorized discharges is followed.
10. 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 City has not complied with one or more of the terms or conditions in this Agreed Order.
11. 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.
12. 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 Sites, the City is alleged to have:

1. Failed to prevent and mitigate the unauthorized discharge and accumulation of sludge in the receiving stream, in violation of TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on January 31, 2007. Specifically, the investigator observed a ruptured collection sewer line located on the north bank of an unnamed tributary of Little Elm Creek, at the corner of North 34th Street and Highway 53. Wastewater was discharging from the line directly

into the creek and blackish brown sludge was present from the point of discharge to a distance of approximately 50 yards downstream.

2. Failed to prevent and mitigate the unauthorized discharge and accumulation of sludge in the receiving stream, in violation of TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on February 23, 2007. Specifically, the investigator observed evidence of a discharge from a manhole located at 2402 South 61st Street. An accumulation of sludge and debris was visible leading from the manhole to a distance of approximately 20 yards downstream of Bird Creek.
3. Failed to notify the TCEQ of an unauthorized discharge, in violation of TEX. WATER CODE § 26.039(b), as documented during an investigation conducted on December 28, 2006. Specifically, a review of the service call logs revealed that the City failed to notify TCEQ for an unauthorized discharge that occurred on December 24, 2006 from a manhole located at the corner of Melrose Lane and Wagon Trail.
4. Failed to pay outstanding General Permits Stormwater fees and associated late fees for TCEQ Account No. 20009879 for Fiscal Year 2007, in violation of TEX. WATER CODE §§ 5.702 and 26.0291 and 30 TEX. ADMIN. CODE § 205.6, as documented during an overdue fee review conducted on June 19, 2007.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City'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 Temple, Docket No. 2007-0971-WQ-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. It is further ordered that the City shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, submit payment for all outstanding fees, including any associated penalties and interest and with the notation, "Re: City of Temple, TCEQ Account No. 20009879," to the address referenced in Ordering Provision No. 1 above; and
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. 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 fine 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
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City 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.
4. If the City 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 City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Miller
For the Executive Director

10/27/2007
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.

William A. Jones, III
Signature

July 19, 2007
Date

William A. Jones, III
Name (Printed or typed)
Authorized Representative of
City of Temple



Mayor
Title

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

APPROVED AS TO FORM:

BY: One San Galan
CITY ATTORNEY'S OFFICE

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