

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0121-WQ-E **TCEQ ID:** RN102077328 **CASE NO.:** 35242

RESPONDENT NAME: City of Austin

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" 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: Dessau WWTP, located approximately 1.4 miles north of the intersection of Dessau Road and Yager Lane, approximately 2.5 miles southeast of the intersection of Interstate Highway 35 and Dessau Road with an associated lift station located at 12900 Dessau Road, Travis County</p> <p>TYPE OF OPERATION: Wastewater treatment facility and lift station</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on June 9, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Samuel Short, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-5363; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Greg Meszaros, Director, City of Austin, 625 East 10th Street, Austin, Texas 78701 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 type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: December 3, 2007</p> <p>Date of NOV/NOE Relating to this Case: January 14, 2008 (NOE)</p> <p>Background Facts: This was a routine investigation. This unauthorized discharge resulted in a fish kill of approximately 1,144 fish.</p> <p>WATER</p> <p>1) Failed to prevent the unauthorized discharge of wastewater into waters in the state [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System Permit No. WQ0012971001, Permit Conditions 2.g.].</p> <p>2) Failed to provide adequate emergency provisions for a lift station [30 TEX. ADMIN. CODE § 317.3(e)(5)].</p>	<p>Total Assessed: \$16,250</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$16,250</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>Findings Orders Justification: Environmental receptors have been exposed to pollutants which exceeded levels that are protective.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. On December 3, 2007, pumped the wastewater from the creek and removed the dead fish;</p> <p>b. On December 3, 2007, completed the repairs to the primary and secondary controls and installed a redundant float for alarm purposes; and</p> <p>c. On December 4, 2007, flushed the creek with potable water.</p>

Additional ID No(s): WQ0012971001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

DATES	Assigned	14-Jan-2008	Screening	17-Jan-2008	EPA Due	
	PCW	24-Jan-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Austin
Reg. Ent. Ref. No.	RN102077328
Facility/Site Region	11-Austin
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35242	No. of Violations	2
Docket No.	2008-0121-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Enf. Coordinator	Samuel Short
Multi-Media		EC's Team	Enforcement Team 3
Admin. Penalty \$	Limit Minimum	\$0	Maximum
			\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$12,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	55% Enhancement	Subtotals 2, 3, & 7	\$6,875
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Notes: Enhancement recommended for having eleven NOV's for the same or similar violations within the last five years.

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

Good Faith Effort to Comply	25% Reduction	Subtotal 5	\$3,125
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with x)

Notes: The Respondent came into compliance on December 4, 2007.

Total EB Amounts	\$1	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$2,500	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$16,250
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$16,250
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$16,250
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DEFERRAL	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	\$16,250
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Screening Date 17-Jan-2008

Docket No. 2008-0121-WQ-E

PCW

Respondent City of Austin

Policy Revision 2 (September 2002)

Case ID No. 35242

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN102077328

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

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 <i>(number of NOVs meeting criteria)</i>	11	55%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of 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) 55%

>> **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 recommended for having eleven NOVs for the same or similar violations within the last five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 55%

Screening Date	17-Jan-2008	Docket No.	2008-0121-WQ-E	PCW
Respondent	City of Austin	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	35242	<i>PCW Revision November 6, 2007</i>		
Reg. Ent. Reference No.	RN102077328			
Media [Statute]	Water Quality			
Enf. Coordinator	Samuel Short			
Violation Number	1			
Rule Cite(s)	Tex. Water Code § 26.121(a)(1), 30 Tex. Admin. Code § 305.125(1), and TPDES Permit No. WQ0012971001, Permit Conditions 2.g.			
Violation Description	Failed to prevent the unauthorized discharge of wastewater into waters in the state, as documented during an investigation conducted on December 3, 2007. Specifically, on December 2, 2007, the controls and alarms on a lift station located at 12900 Dessau Road failed and 108,000 gallons of wastewater was discharged from a manhole located upstream of the lift station into a unnamed tributary to Harris Branch Creek killing an estimated 1,144 fish.			
Base Penalty				\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual	x			
	Potential				
				50%	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes: Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment: \$5,000

\$5,000

Violation Events

Number of Violation Events: 2 2 Number of violation days

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

Violation Base Penalty: \$10,000

Two daily events are recommended from the date of discharge, December 2, 2007, to the date the discharge was cleaned up, December 4, 2007.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount: \$1	Violation Final Penalty Total: \$13,000
This violation Final Assessed Penalty (adjusted for limits): \$13,000	

Economic Benefit Worksheet

Respondent City of Austin
Case ID No. 35242
Reg. Ent. Reference No. RN102077328
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$1,000	2-Dec-2007	3-Dec-2007	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	\$1,500	2-Dec-2007	4-Dec-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
 The estimated cost to repair the primary and secondary controls and install a redundant float. Date required is the date the controls and alarm system failed and the final date is the date the repairs were completed. The estimated cost to pump wastewater from the creek and flush the creek with potable water. Date required is the date the discharge began and the final date is the date that the cleanup was finished.

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	\$1
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Screening Date	17-Jan-2008	Docket No.	2008-0121-WQ-E	PCW
Respondent	City of Austin			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	35242			<i>PCW Revision November 6, 2007</i>
Reg. Ent. Reference No.	RN102077328			
Media [Statute]	Water Quality			
Enf. Coordinator	Samuel Short			

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> 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" value="x"/>	<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

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

Violation Base Penalty

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 Austin
Case ID No. 35242
Reg. Ent. Reference No. RN102077328
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
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

See economic benefit for violation no. 1

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 \$0

TOTAL \$0

Compliance History

Customer/Respondent/Owner-Operator: CN600135198 City Of Austin Classification: AVERAGE Rating: 3.04
Regulated Entity: RN102077328 DESSAU WWTP Classification: AVERAGE Site Rating: 0.78
ID Number(s): WASTEWATER PERMIT WQ0012971001
WASTEWATER PERMIT TPDES0097870
WASTEWATER PERMIT TX0097870
WASTEWATER LICENSING LICENSE WQ0012971001
Location: APPROXIMATELY 1.4 MILES NORTH OF THE INTERSECTION OF DESSAU ROAD AND YAGER LANE, APPROXIMATELY 2.5 MILES SOUTHEAST OF THE INTERSECTION OF INTERSTATE HIGHWAY 35 AND DESSAU ROAD IN TRAVIS COUNTY (12900 DESSUA ROAD, AUSTIN, TEXAS) Rating Date: 9/1/2007 Repeat Violator: NO
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: January 16, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 16, 2003 to January 16, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Samuel Short Phone: (512) 239-5363

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? Yes
3. If Yes, who is the current owner? City Of Austin
4. If Yes, who was/were the prior owner(s)? Dessau Utilities, Inc.
5. When did the change(s) in ownership occur? 01/31/2006

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 01/22/2003 (217962)
 - 2 02/21/2003 (217940)
 - 3 03/21/2003 (217942)
 - 4 04/22/2003 (320596)
 - 5 05/19/2003 (320598)
 - 6 06/23/2003 (320599)
 - 7 07/22/2003 (320601)
 - 8 08/21/2003 (320602)
 - 9 09/18/2003 (320603)
 - 10 10/22/2003 (320604)
 - 11 11/21/2003 (320605)
 - 12 12/15/2003 (320606)
 - 13 01/20/2004 (320607)
 - 14 02/17/2004 (320594)
 - 15 03/22/2004 (320595)
 - 16 04/15/2004 (320597)
 - 17 05/14/2004 (363016)
 - 18 06/22/2004 (320600)
 - 19 07/21/2004 (363017)
 - 20 08/20/2004 (363018)
 - 21 09/21/2004 (363019)
 - 22 11/19/2004 (388035)
 - 23 12/21/2004 (388036)
 - 24 01/20/2005 (388037)
 - 25 02/22/2005 (388033)
 - 26 03/21/2005 (388034)
 - 27 04/19/2005 (430540)
 - 28 05/23/2005 (430541)
 - 29 06/22/2005 (430542)
 - 30 07/22/2005 (430543)
 - 31 08/19/2005 (446175)

32 09/21/2005 (446176)
 33 10/19/2005 (478478)
 34 11/21/2005 (478479)
 35 12/21/2005 (478480)
 36 01/20/2006 (478481)
 37 02/21/2006 (478476)
 38 03/21/2006 (478477)
 39 04/20/2006 (504651)
 40 05/18/2006 (504652)
 41 06/19/2006 (504653)
 42 07/19/2006 (526965)
 43 08/16/2006 (526966)
 44 09/19/2006 (526967)
 45 10/20/2006 (526968)
 46 11/30/2007 (598747)
 47 01/09/2008 (613109)

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

Date: 01/31/2003 (217940)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 03/31/2003 (320596)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 06/30/2003 (320601)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 10/31/2003 (320605)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 12/31/2003 (320607)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 01/31/2004 (320594)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 01/31/2005 (388033)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 11/30/2005 (478480)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 03/31/2006 (504651)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 06/30/2006 (526965)
 Self Report? YES Classification: Moderate
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
 TWC Chapter 26 26.121(a)
 Description: Failure to meet the limit for one or more permit parameter
 Date: 11/28/2007 (598747)
 Self Report? NO Classification: Minor
 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 unauthorized discharges of partially treated sewage adjacent to waters of the state
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
Description: Failure to meet daily average, 7-day average and daily maximum limit for ammonia-nitrogen

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 AUSTIN
RN102077328**

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§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-0121-WQ-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 Austin (“the City”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City presented this agreement to the Commission.

The City 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 City 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 City.

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

I. FINDINGS OF FACT

1. The City owns and operates a wastewater treatment facility located approximately 1.4 miles north of the intersection of Dessau Road and Yager Lane, approximately 2.5 miles southeast of the intersection of Interstate Highway 35 and Dessau Road with an associated lift station located at 12900 Dessau Road in Travis County, Texas (the “Facility”).

2. The City has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation on December 3, 2007, TCEQ staff documented that the controls and alarms on a lift station located at 12900 Dessau Road failed and 108,000 gallons of wastewater was discharged from a manhole located upstream of the lift station into a unnamed tributary to Harris Branch Creek killing an estimated 1,144 fish.
4. During an investigation on December 3, 2007, TCEQ staff documented that the alarm system on the lift station located at 12900 Dessau Road failed to notify the City that the lift station had a pump failure and a high wastewater level.
5. The City received notice of the violations on January 19, 2008.
6. The Executive Director recognizes that the City has implemented the following corrective measures at the Facility:
 - a. On December 3, 2007, pumped the wastewater from the creek and removed the dead fish;
 - b. On December 3, 2007, completed the repairs to the primary and secondary controls and installed a redundant float for alarm purposes; and
 - c. On December 4, 2007, flushed the creek with potable water.

II. CONCLUSIONS OF LAW

1. The City 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 City failed to prevent the unauthorized discharge of wastewater into waters in the state, 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. WQ0012971001, Permit Conditions 2.g.
3. As evidenced by Findings of Fact No. 4, the City failed to provide adequate emergency provisions for a lift station, in violation of 30 TEX. ADMIN. CODE § 317.3(e)(5).
4. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the City 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.

5. An administrative penalty in the amount of Sixteen Thousand Two Hundred Fifty Dollars (\$16,250) 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. The City has paid the Sixteen Thousand Two Hundred Fifty Dollar (\$16,250) administrative penalty.

III. ORDERING PROVISIONS

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

1. The City is assessed an administrative penalty in the amount of Sixteen Thousand Two Hundred Fifty Dollars (\$16,250) as set forth in Section II, Paragraph 5 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the City'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 Austin, Docket No. 2008-0121-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. 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 Facility operations referenced in this Agreed Order.
3. 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 City if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
4. 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.
5. 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.
6. 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.

7. 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



For the Executive Director

5/21/2008

Date

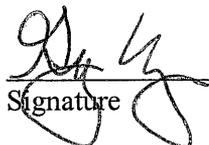
I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Austin. I am authorized to agree to the attached Agreed Order on behalf of the City of Austin, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment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

I understand that by entering into this Agreed Order, the City of Austin 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.



Signature

5/4/08

Date

Greg Meszanos

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

Director

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.

