

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2009-1428-MWD-E **TCEQ ID:** RN101607794 **CASE NO.:** 38307

**RESPONDENT NAME:** City of Austin

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> South Austin Regional WWTP, located between Onion Creek and the Colorado River, approximately two miles west of their confluence, approximately two miles east of the Farm-to-Market Road 973 crossing of the Colorado River and two miles north of State Highway 71, Travis County, which includes a lift station located near 13321 Pearce Lane, Travis County</p> <p><b>TYPE OF OPERATION:</b> Wastewater treatment plant</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on February 22, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Harvey Wilson, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-0321; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Paul Shropshire, Division Manager, City of Austin, 7113 Farm-to-Market Road 969, Austin, Texas 78724                      Mr. Greg Meszaros, Director, Austin Water Utility, City of Austin, 7113 Farm-to-Market Road 969, Austin, Texas 78724  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> May 31, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> August 20, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WATER</b></p> <p>Failure to prevent the unauthorized discharge of wastewater into water in the state. Specifically, on May 31, 2009, 90,000 gallons of wastewater was discharged from the manhole located at 13321 Pearce Lane into Dry Creek, killing approximately 317 fish and adversely impacting approximately 575 linear feet of Dry Creek [TEX. WATER CODE § 26.121(a)(1) and Texas Pollutant Discharge Elimination System Permit No. WQ0010543012, Operational Requirements No. 1 and Permit Condition No. 2.g].</p>	<p><b>Total Assessed:</b> \$8,200</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$8,200</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Orders Justification:</b> Environmental receptors have been exposed to pollutants which exceed levels that are protective.</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that by June 2, 2009, the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. Removed and disposed of the discharged wastewater from Dry Creek;</p> <p>b. Measured the dissolved oxygen and ammonia levels at several locations in Dry Creek down stream from the lift station;</p> <p>c. Collected and properly disposed of the dead fish; and</p> <p>d. Aerated Dry Creek with fresh water via a two-inch pump for 24 hours.</p>

Additional ID No(s): WQ0010543012



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	31-Aug-2009			
	<b>PCW</b>	4-Sep-2009	<b>Screening</b>	3-Sep-2009	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	City of Austin
<b>Reg. Ent. Ref. No.</b>	RN101607794
<b>Facility/Site Region</b>	11-Austin
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	38307	<b>No. of Violations</b>	1
<b>Docket No.</b>	2009-1428-MWD-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Harvey Wilson
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit</b>	Minimum \$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$10,000
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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.

<b>Compliance History</b>	7.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$700
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**Notes:** An enhancement is recommended because the Respondent received one NOV for a same or similar violation and one NOV for a dissimilar violation within the past 5 years.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$2,500
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$0  
Approx. Cost of Compliance \$1,500  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$8,200
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes:**

<b>Final Penalty Amount</b>	\$8,200
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$8,200
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$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.

<b>PAYABLE PENALTY</b>	\$8,200
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**Screening Date** 3-Sep-2009

**Docket No.** 2009-1428-MWD-E

**PCW**

**Respondent** City of Austin

Policy Revision 2 (September 2002)

**Case ID No.** 38307

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN101607794

**Media [Statute]** Water Quality

**Enf. Coordinator** Harvey Wilson

### 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	1	2%
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 judgements 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%
<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)** 7%

>> **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**

An enhancement is recommended because the Respondent received one NOV for a same or similar violation and one NOV for a dissimilar violation within the past 5 years.

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

<b>Screening Date</b>	3-Sep-2009	<b>Docket No.</b>	2009-1428-MWD-E	<b>PCW</b>
<b>Respondent</b>	City of Austin	Policy Revision 2 (September 2002)		
<b>Case ID No.</b>	38307	PCW Revision October 30, 2008		
<b>Reg. Ent. Reference No.</b>	RN101607794			
<b>Media [Statute]</b>	Water Quality			
<b>Enf. Coordinator</b>	Harvey Wilson			

<b>Violation Number</b>	1
<b>Rule Cite(s)</b>	Tex. Water Code § 26.121(a)(1) and Texas Pollutant Discharge Elimination System Permit No. WQ0010543012, Operational Requirements No. 1 and Permit Conditions No. 2.g.
<b>Violation Description</b>	Failed to prevent unauthorized discharges of wastewater into water in the state. Specifically, on May 31, 2009, 90,000 gallons of wastewater was discharged from the manhole located at 13321 Pearce Lane into Dry Creek, killing approximately 317 fish and adversely impacting approximately 575 linear feet of Dry Creek.
<b>Base Penalty</b>	\$10,000

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

OR	<b>Harm</b>			
	Release	Major	Moderate	Minor
	Actual	x		
	Potential			
				<b>Percent</b> 50%

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
					<b>Percent</b> 0%

<b>Matrix Notes</b>	Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors.
<b>Adjustment</b>	\$5,000

**Violation Events**

<b>Number of Violation Events</b>	2	<b>Number of violation days</b>	2
mark only one with an x	daily	x	
	weekly		
	monthly		
	quarterly		
	semiannual		
	annual		
	single event		
<b>Violation Base Penalty</b>	\$10,000		

Two daily-events are recommended from the date of the discharge until the date of compliance (May 31, 2009 - June 2, 2009).

**Good Faith Efforts to Comply** 25.0% Reduction \$2,500

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	x	
N/A		(mark with x)
<b>Notes</b>	The Respondent returned to compliance on June 2, 2009, and the NOE was issued August 20, 2009.	
<b>Violation Subtotal</b>	\$7,500	

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b>	\$0
<b>Violation Final Penalty Total</b>	\$8,200
<b>This violation Final Assessed Penalty (adjusted for limits)</b>	\$8,200

### Economic Benefit Worksheet

**Respondent** City of Austin  
**Case ID No.** 38307  
**Reg. Ent. Reference No.** RN101607794  
**Media** Water Quality  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

**Item Cost**    **Date Required**    **Final Date**    **Yrs**    **Interest Saved**    **Onetime Costs**    **EB Amount**  
**Item Description** 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	\$1,000	31-May-2009	2-Jun-2009	0.01	\$0	n/a	\$0
Remediation/Disposal	\$500	1-Jun-2009	2-Jun-2009	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 estimated cost of training the operator and taking additional samples so that calcium nitrate does not render the lift station alarms ineffective and the cost to dispose of the dead fish, remove the wastewater, and aerate the creek. Date Required is the date the violation occurred. Final Date is the date of compliance.

**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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance    **\$1,500**    **TOTAL**    **\$0**

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600135198 City of Austin Classification: AVERAGE Rating: 2.93  
Regulated Entity: RN101607794 SOUTH AUSTIN REGIONAL WWTP Classification: AVERAGE Site Rating: 1.75

ID Number(s): WASTEWATER PERMIT WQ0010543012  
WASTEWATER PERMIT TX0071889  
WASTEWATER LICENSING LICENSE WQ0010543012

Location: located between Onion Creek and the Colorado River, approximately 2 miles west of their confluence, approximately 2 miles east of the Farm-to-Market Road 973 crossing of the Colorado River and 2 miles north of State Highway 71 in Travis County, Texas

TCEQ Region: REGION 11 - AUSTIN  
Date Compliance History Prepared: August 31, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: August 31, 2004 to August 31, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Harvey Wilson Phone: 239 - 0321

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

## 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	09/21/2004	(359028)
2	10/18/2004	(359029)
3	11/22/2004	(359030)
4	12/20/2004	(584269)
5	01/31/2005	(385712)
6	02/18/2005	(385711)
7	03/18/2005	(584246)
8	04/15/2005	(584252)
9	04/20/2005	(584249)
10	06/20/2005	(584255)

11	07/25/2005	(584258)
12	08/03/2005	(396128)
13	08/22/2005	(584261)
14	09/19/2005	(584263)
15	10/20/2005	(584265)
16	11/21/2005	(584267)
17	12/15/2005	(440311)
18	12/19/2005	(584270)
19	02/21/2006	(584244)
20	02/22/2006	(584272)
21	03/22/2006	(584247)
22	04/26/2006	(584250)
23	05/18/2006	(584253)
24	06/21/2006	(584256)
25	07/21/2006	(584259)
26	08/08/2006	(490072)
27	08/15/2006	(584262)
28	09/15/2006	(584264)
29	10/23/2006	(584266)
30	11/20/2006	(584268)
31	12/22/2006	(584271)
32	02/21/2007	(584245)
33	02/22/2007	(584273)
34	03/19/2007	(584248)
35	04/23/2007	(584251)
36	04/30/2007	(557562)
37	05/17/2007	(584254)
38	05/25/2007	(557508)
39	06/04/2007	(584260)
40	06/19/2007	(584257)
41	09/20/2007	(608475)
42	09/26/2007	(608476)
43	09/26/2007	(608477)
44	11/28/2007	(610139)
45	10/27/2008	(705971)
46	05/08/2009	(739948)
47	06/30/2009	(760352)
48	07/03/2009	(749088)
49	08/25/2009	(764779)

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

Date: 08/04/2005 (396128)

CN600135198

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 305, SubChapter F 305.125(4)

30 TAC Chapter 305, SubChapter F 305.125(5)

Permit Conditions, Page 7, No. 2(g) PERMIT

TWC Chapter 26 26.121

TWC Chapter 26 26.121(a)

TWC Chapter 26 26.121(a)(1)

TWC Chapter 26 26.121(a)(2)

TWC Chapter 26 26.121(a)(3)

TWC Chapter 26 26.121(b)

TWC Chapter 26 26.121(c)

TWC Chapter 26 26.121(d)

TWC Chapter 26 26.121(e)

Description: Failure to prevent unauthorized discharges of wastewater or any other waste into or

adjacent to water in the state at any location not permitted as an outfall or otherwise defined in the Other Requirements section of Permit No.: WQ0010543-012.

Date: 05/11/2009 (739948)

CN600135198

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.5(e)

Description: Failure to report increased frequency of monitoring on the discharge monitoring report

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  
RN101607794

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§  
§  
§  
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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2009-1428-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 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 plant located between Onion Creek and the Colorado River, approximately two miles west of their confluence, approximately two miles east of the Farm-to-Market Road 973 crossing of the Colorado River and two miles north of State Highway 71 in Travis County, Texas (the "Facility") which includes a lift station located near 13321 Pearce Lane.

2. The City has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. During an investigation on May 31, 2009, TCEQ staff observed the pool under the Pearce Road bridge at Dry Creek was contaminated with wastewater. The investigator determined that the wastewater had been discharged from a manhole located at 13321 Pearce Lane into Dry Creek. Approximately 90,000 gallons of wastewater was discharged into Dry Creek, killing approximately 317 fish and adversely impacting approximately 575 linear feet of Dry Creek.
4. The City received notice of the violations on August 25, 2009.
5. The Executive Director recognizes that by June 2, 2009, the City has implemented the following corrective measures at the Facility:
  - a. Removed and disposed of the discharged wastewater from Dry Creek;
  - b. Measured the dissolved oxygen and ammonia levels at several locations in Dry Creek downstream from the lift station;
  - c. Collected and properly disposed of the dead fish; and
  - d. Aerated Dry Creek with fresh water via a two-inch pump for 24 hours.

## 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 water in the state, in violation of TEX. WATER CODE § 26.121(a)(1) and Texas Pollutant Discharge Elimination System Permit No. WQ0010543012, Operational Requirements No. 1 and Permit Condition No. 2.g.
3. 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.
4. An administrative penalty in the amount of Eight Thousand Two Hundred Dollars (\$8,200) 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 Eight Thousand Two Hundred Dollar (\$8,200) 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 Eight Thousand Two Hundred Dollars (\$8,200) as set forth in Section II, Paragraph 4 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. 2009-1428-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 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 Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
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

11/29/2010  
\_\_\_\_\_  
Date

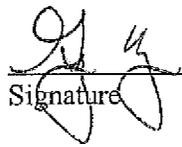
I, the undersigned, have read and understand the attached Agreed Order in the matter of City of Austin. I am authorized to agree to the attached Agreed Order on behalf of City of Austin, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for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

I understand that by entering into this Agreed Order, 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

12/2/09  
\_\_\_\_\_  
Date

Greg Meszaros  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
City of Austin

Director, Austin Water Utility  
\_\_\_\_\_  
Title City of Austin

**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.