

Executive Summary – Enforcement Matter – Case No. 41544

City of Killeen

RN103174306

Docket No. 2011-0634-WQ-E

Order Type:

Findings Agreed Order

Findings Order Justification:

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

Media:

WQ

Small Business:

No

Location(s) Where Violation(s) Occurred:

City of Killeen Collection Systems, 2003 Little Nolan Road with an associated lift station and manholes along Nolan Creek, Killeen, Bell County

Type of Operation:

Wastewater collection system with an associated lift station and manholes

Other Significant Matters:

Additional Pending Enforcement Actions: Yes, Docket No. 2011-1072-WQ-E

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: August 5, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$10,000

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$10,000

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

**Executive Summary – Enforcement Matter – Case No. 41544
City of Killeen
RN103174306
Docket No. 2011-0634-WQ-E**

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: February 23, 2011
Date(s) of NOE(s): April 25, 2011

Violation Information

Failed to prevent the unauthorized discharge of wastewater from a collection system into water in the state [TEX. WATER CODE § 26.121(a)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:

- a. On February 22, 2011, repaired the transducer and broke up the grease blanket; and
- b. On February 24, 2011, cleaned up the discharge by disinfecting the area around the discharge and pumping the impacted water from the creek.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Samuel Short, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-5363; Debra Barber, Enforcement Division, MC 219, (512) 239-0412
TCEQ SEP Coordinator: N/A
Respondent: Glenn Morrison, Interim City Manager, City of Killeen, P.O. Box 1329, Killeen, Texas 76540
The Honorable Timothy Hancock, Mayor, City of Killeen, P.O. Box 1329, Killeen, Texas 76540
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	25-Apr-2011	Screening	29-Apr-2011	EPA Due	
	PCW	4-May-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Killeen		
Reg. Ent. Ref. No.	RN103174306		
Facility/Site Region	9-Waco	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	41544	No. of Violations	1
Docket No.	2011-0634-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Samuel Short
		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**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts
 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.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 29-Apr-2011

Docket No. 2011-0634-WQ-E

PCW

Respondent City of Killeen

Policy Revision 2 (September 2002)

Case ID No. 41544

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103174306

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 notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 25%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one Agreed Order without denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 25%

Screening Date 29-Apr-2011

Docket No. 2011-0634-WQ-E

PCW

Respondent City of Killeen

Policy Revision 2 (September 2002)

Case ID No. 41544

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103174306

Media [Statute] Water Quality

Enf. Coordinator Samuel Short

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(1)

Violation Description

Failed to prevent the unauthorized discharge of wastewater from a collection system into water in the state, as documented during an investigation conducted on February 23, 2011. Specifically, on February 22, 2011, a transducer went down at Lift Station No. 1 located near Nolan Creek due to a grease blanket, which resulted in discharges from the manhole located at Lift Station No. 1 and from several other manholes located between Lift Station No. 1 and 38th Street. A total of approximately 289,000 gallons of sewage was released and entered Nolan Creek, killing several hundred fish.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	X		
Potential			

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to pollutants which exceeded 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

daily	X
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$10,000

Two daily events are recommended from the date the discharge occurred, February 22, 2011, to the date the clean up was complete, February 24, 2011.

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)

Notes

The Respondent returned to compliance by February 24, 2011.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$10,000

This violation Final Assessed Penalty (adjusted for limits) \$10,000

Economic Benefit Worksheet

Respondent City of Killeen
Case ID No. 41544
Req. Ent. Reference No. RN103174306
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$2,500	22-Feb-2011	24-Feb-2011	0.01	\$1	n/a	\$1
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost to clean the transducer at Lift Station No. 1, break up the grease blanket, and clean up the discharge. Date required is the date the discharge occurred and the final date is the date the clean up was completed.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,500

TOTAL

\$1

Compliance History

Customer/Respondent/Owner-Operator: CN600674683 City of Killeen Classification: AVERAGE Rating: 5.66

Regulated Entity: RN103174306 CITY OF KILLEEN COLLECTION SYSTEMS Classification: AVERAGE Site Rating: 35.00

ID Number(s): WATER QUALITY NON PERMITTED ID NUMBER R09WW001

Location: 2003 LITTLE NOLAN RD, KILLEEN, TX, 76542

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: April 27, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 27, 2006 to April 27, 2011

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/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: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 08/23/2007 ADMINORDER 2006-1756-WQ-E
Classification: Major
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

Description: Unauthorized discharge of raw wastewater into or adjacent to waters of the state which commenced on February 4, 2006 resulting in a fish kill.

Classification: Minor
Citation: 2D TWC Chapter 26, SubChapter A 26.039(e)
30 TAC Chapter 319, SubChapter C 319.302(b)
30 TAC Chapter 319, SubChapter C 319.302(c)

Description: Failure to notify the news media of a spill which commenced on February 4, 2006, regardless of volume, that the facility owner knows or has reason to know, will adversely affect a public or private source of drinking water not later than 24 hours after becoming aware of the spill

Classification: Minor
Citation: 2D TWC Chapter 26, SubChapter A 26.039(b)

Description: Failure to provide complete noncomp notif inform to the TCEQ not later than 24 hours after the occurrence of the unauthorized discharge of wastewater exceeding 100,000 gallons. Specifically, timely notification was provided via fax, however, the information on volume was not reflective of the actual amount discharged

- 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	02/07/2008	(599525)
2	04/28/2008	(654178)
3	06/10/2008	(671703)

4	12/10/2008	(705308)
5	09/14/2010	(850245)
6	04/14/2011	(902033)
7	04/22/2011	(907662)

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

N/A

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF KILLEEN
RN103174306**

**§
§
§
§
§**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2011-0634-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 Killeen (“the Respondent”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

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

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

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

I. FINDINGS OF FACT

1. The Respondent owns and operates a wastewater collection system at 2003 Little Nolan Road with an associated lift station and manholes located along Nolan Creek in Killeen, Bell County, Texas (the “Facility”).

2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation on February 23, 2011, TCEQ staff documented that on February 22, 2011, a transducer went down at Lift Station No. 1 located near Nolan Creek due to a grease blanket, which resulted in discharges from the manhole located at Lift Station No. 1 and from several other manholes located between Lift Station No. 1 and 38th Street. A total of approximately 289,000 gallons of sewage was released and entered Nolan Creek, killing several hundred fish.
4. The Respondent received notice of the violations on April 27, 2011.
5. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. On February 22, 2011, repaired the transducer and broke up the grease blanket; and
 - b. On February 24, 2011, cleaned up the discharge by disinfecting the area around the discharge and pumping the impacted water from the creek.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to prevent the unauthorized discharge of wastewater from a collection system into water in the state, in violation of TEX. WATER CODE § 26.121(a)(1).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Ten Thousand Dollars (\$10,000) 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 Respondent has paid the Ten Thousand Dollar (\$10,000) administrative penalty.

III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Ten Thousand Dollars (\$10,000) 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 Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Killeen, Docket No. 2011-0634-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 Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
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 Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
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 Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature

could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

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

8/18/11
Date

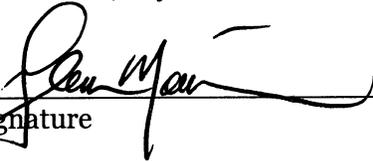
I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Killeen. I am authorized to agree to the attached Agreed Order on behalf of the City of Killeen, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment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

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

6/20/11
Date

GLENN MORRISON
Name (Printed or typed)
Authorized Representative of
City of Killeen

INTERIM CITY MANAGER
Title

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