

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO. 2009-2053-WQ-E**

**RN101227189**

**CASE NO. 38877**

**RESPONDENT NAME: CITY OF DALLAS WATER UTILITIES**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 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 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> 405 Long Creek Road, Sunnyvale, Dallas County</p> <p><b>TYPE OF OPERATION:</b> public water system</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints related to this enforcement action. There is no record of additional pending enforcement action regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired January 10, 2011. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Tammy L. Mitchell, Litigation Division, MC 175, (512) 239-3400                  Lena Roberts, Litigation Division, MC 175, (512) 239-3400  <b>TCEQ Enforcement Coordinator:</b> Thomas Jecha, Water Enforcement Section, MC 128, (512) 239-2576  <b>TCEQ Regional Contact:</b> Sid Slocum, Dallas/Fort Worth Regional Office, MC R-4, (817) 588-5901  <b>TCEQ SEP Coordinator:</b> Sharon Blue, Litigation Division, MC 175, (512) 239-2223  <b>Respondent:</b> The Honorable Tom Leppert, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, Texas 75201-6390  <b>Respondent's Attorney:</b> Lemuel B. Thomas, Assistant City Attorney, City of Dallas, 1500 Marilla Street, Suite 7CN, Dallas, Texas 75201-6390</p>		

**RESPONDENT NAME: CITY OF DALLAS WATER UTILITIES  
DOCKET NO. 2009-2053-WQ-E**

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint:</b> N/A</p> <p><b>Date of Investigation:</b> November 16, 2009</p> <p><b>Date of NOE:</b> November 20, 2009</p> <p><b>Background Facts:</b> The EDRP was filed on February 10, 2010. Respondent filed an answer and the case was referred to SOAH. The Agreed Order was signed on November 12, 2010, and re-signed on December 20, 2010.</p> <p><b>Current Compliance Status:</b> Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p><b>WQ:</b></p> <ol style="list-style-type: none"> <li>Failed prevent the unauthorized discharge of a pollutant into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)].</li> <li>Failed to provide timely notification to the TCEQ of an accidental discharge which causes pollution [TEX. WATER CODE § 26.039(b)].</li> </ol>	<p><b>Total Assessed:</b> \$9,500</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$9,500</p> <p><b>Total Due to General Revenue:</b> \$0</p> <p>The entire administrative penalty amount shall be conditionally offset by the completion of a Supplemental Environmental Project (SEP).</p> <p><b>Compliance History Classifications:</b>  <i>Person/CN</i> – Average  <i>Site/RN</i> – N/A</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 Order Justification:</b> People or environmental receptors have been exposed to pollutants which exceed levels that are protective.</p>	<p><b>Ordering Provisions:</b></p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Implement and complete a SEP (RC&amp;D – <i>Water or Wastewater Treatment Assistance</i> – Trinity River Basin).</li> <li>Within 60 days, develop a standard operating procedure to improve interdepartmental communications and timely notifications to the TCEQ, and to clarify reporting and response requirements for personnel.</li> <li>Within 75 days, submit written certification demonstrating compliance.</li> </ol>

**Attachment A**  
**Docket Number: 2009-2053-WQ-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** City of Dallas Water Utilities  
**Penalty Amount:** Nine Thousand Five Hundred Dollars (\$9,500)  
**SEP Offset Amount:** Nine Thousand Five Hundred Dollars (\$9,500)  
**Type of SEP:** Pre-approved SEP  
**Third-Party Recipient:** Texas Association of Resource Conservation & Development Areas, Inc. ("RC&D") – *Water or Wastewater Treatment Assistance*  
**Location of SEP:** Trinity River Basin (preference for Dallas County)

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to **Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")** to be used for the *Water or Wastewater Treatment Assistance* project as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, the SEP Offset Amount will pay for the labor and disposal costs associated with assistance to low-income residents with shallow, improperly designed, or contaminated drinking water wells or failing wastewater systems, or plugging of abandoned wells. If RC&D is unable to spend the total SEP Offset Amount on this project, upon approval of the Executive Director, the remaining SEP Offset Amount may be applied to another approved RC&D project. The projects will be administered in accordance with federal, state, and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

The wastewater portion of this SEP will provide a discernible environmental benefit by preventing the release of sewage into the environment. Raw sewage can carry bacteria, viruses, protozoa (parasitic organisms), helminthes (intestinal worms), and bioaerosols (inhalable molds and fungi). The diseases they may cause range in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis. People can be exposed through:

- Sewage in drinking water sources.
- Direct contact in areas of public access such as in lawns or streets, or waters used for recreation.
- Shellfish harvested from areas contaminated by raw sewage.
- Inhalation and skin absorption.

Sewage overflows may cause damage to the environment. A key concern with sewage overflows is the effect on rivers, lakes, streams, or aquifer systems. In addition to potential spread of disease, sewage in the environment contributes excess nutrients, metals, and toxic pollutants that contaminate water quality, cause excess algae blooms, and kill fish and other organisms in aquatic habitats.

The drinking water portion of this project will protect water sources for drinking, recreation and wildlife from contamination from the failing treatment systems, and protect public health from contaminated drinking water supplies.

### C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

## **2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. The Respondent shall make the contribution check payable to "Texas Association of RC&D" and mail the check with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc. (RC&D)  
1716 Briarcrest Drive, Suite 507  
Bryan, Texas 77802-2700

## **3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

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

## **4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall submit a check for any remaining amount due made payable to "Texas Commission on Environmental Quality" with the notation "SEP Refund" and the docket number of the case, and shall send it to:

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

**5. Publicity**

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

**6. Clean Texas Program**

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

**7. Other SEPs by TCEQ or Other Agencies**

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



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	23-Nov-2009			
	<b>PCW</b>	18-Dec-2009	<b>Screening</b>	17-Dec-2009	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	City of Dallas Water Utilities
<b>Reg. Ent. Ref. No.</b>	RN101227189
<b>Facility/Site Region</b>	4-Dallas/Fort Worth
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	38877	<b>No. of Violations</b>	2
<b>Docket No.</b>	2009-2053-WQ-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>	Thomas Jecha, P.G.
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$12,000
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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>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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Notes: No adjustment due to compliance history.

<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	\$12	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,300	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$9,500
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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:

**Final Penalty Amount** \$9,500

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$9,500
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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>	\$9,500
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**Screening Date** 17-Dec-2009

**Docket No.** 2009-2053-WQ-E

**PCW**

**Respondent** City of Dallas Water Utilities

*Policy Revision 2 (September 2002)*

**Case ID No.** 38877

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101227189

**Media [Statute]** Water Quality

**Enf. Coordinator** Thomas Jecha, P.G.

### 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> )	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	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%
<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)** 0%

>> **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**

No adjustment due to compliance history.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 0%

**Screening Date** 17-Dec-2009      **Docket No.** 2009-2053-WQ-E      **PCW**  
**Respondent** City of Dallas Water Utilities      *Policy Revision 2 (September 2002)*  
**Case ID No.** 38877      *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101227189  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Thomas Jecha, P.G.

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="50%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<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" value="x"/>
	weekly	<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**

**Good Faith Efforts to Comply**       Reduction     

	Before NOV	NOV to EDPRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text" value="x"/>	<input type="text"/>
N/A	<input type="text"/>	(mark with x)

**Notes**

**Violation Subtotal**

**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 Dallas Water Utilities  
**Case ID No.** 38877  
**Reg. Ent. Reference No.** RN101227189  
**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	\$500	25-May-2009	26-May-2009	0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	2-Jul-2009	3-Jul-2009	0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to clean up and dispose of the dead fish. The date required is the date of the discharges and the final date is the date compliance was achieved.

### Avoided Costs

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

Disposal				0.00	\$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

\$1,000

TOTAL

\$0

**Screening Date** 17-Dec-2009 **Docket No.** 2009-2053-WQ-E **PCW**  
**Respondent** City of Dallas Water Utilities *Policy Revision 2 (September 2002)*  
**Case ID No.** 38877 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101227189  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Thomas Jecha, P.G.

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

OR	<b>Harm</b>				<b>Percent</b> <input type="text" value="0%"/>
	<b>Release</b>	Major	Moderate	Minor	
	<b>Actual</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	<b>Potential</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

	<b>Falsification</b>	Major	Moderate	Minor	<b>Percent</b> <input type="text" value="10%"/>
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

**Notes**

**Violation Subtotal**

**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 Dallas Water Utilities  
**Case ID No.** 38877  
**Reg. Ent. Reference No.** RN101227189  
**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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$300	16-Nov-2009	27-Aug-2010	0.78	\$12	n/a	\$12

Notes for DELAYED costs

Estimated cost to develop a standard operating procedure to improve interdepartmental communications and timely notifications. The date required is the investigation date and the final date is the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$300

**TOTAL**

\$12

# Compliance History Report

Customer/Respondent/Owner-Operator: CN602445728 City of Dallas Water Utilities Classification: AVERAGE Rating: 3.01  
Regulated Entity: RN101227189 DALLAS WATER UTILITY PWS Classification: Site Rating:  
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0570004  
Location: 405 LONG CREEK RD, SUNNYVALE, TX, 75182  
TCEQ Region: REGION 04 - DFW METROPLEX  
Date Compliance History Prepared: November 23, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: November 23, 2004 to November 23, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Thomas Jecha, P.G. Phone: (512) 239 - 2576

## 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

## 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.)  
N/A
  - 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 DALLAS WATER  
UTILITIES;  
RN101227189**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2009-2053-WQ-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Dallas Water Utilities ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and the City, represented by Lemuel B. Thomas, Assistant City Attorney, 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 Agreed Order represents the complete and fully-integrated agreement 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:

**FINDINGS OF FACT**

1. The City owns and operates a public water system located at 405 Long Creek Road in Sunnyvale, Dallas County, Texas (the "Facility"). The City has discharged waste from the Facility into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any state water under the Texas Water Code.
2. During a record review conducted on November 16, 2009, a TCEQ DFW Regional Office investigator documented that the City:
  - a. Failed to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state. Specifically, a water main break on May 25, 2009, near 6001 Campbell, discharged approximately 25,000 gallons of potable water into McKamy Creek killing approximately 297 fish, and a water main break on July 2, 2009, near the intersection of Rosser Road and Deep Valley Drive, discharged approximately 288,000 gallons of potable water into Joe's Creek killing approximately 394 fish; and

- b. Failed to provide timely notification to the TCEQ of an accidental discharge which causes pollution. Specifically, accidental discharges of potable water on May 25 and July 2, 2009, were not reported by the City within 24 hours after the occurrences.
3. The City received notice of the violations on or about November 25, 2009.

### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, the City is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., the City failed to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a).
3. As evidenced by Finding of Fact No. 2.b., the City failed to provide timely notification to the TCEQ of an accidental discharge which causes pollution, in violation of TEX. WATER CODE § 26.039(b).
4. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the City for violations of state statutes 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 nine thousand five hundred dollars (\$9,500.00) 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. Pursuant to TEX. WATER CODE § 7.067, nine thousand five hundred dollars (\$9,500.00) of the administrative penalty shall be conditionally offset by the City's completion of a Supplemental Environmental Project (SEP) as defined in the SEP Agreement ("Attachment A" - incorporated herein by reference). The City's obligation to pay the conditionally offset portion of the administrative penalty assessed by this Agreed Order shall be discharged upon full compliance with all the terms and conditions of this Agreed Order, which includes timely and satisfactory completion of all provisions of the SEP Agreement as determined by the Executive Director.

If the City fails to timely and satisfactorily comply with any requirement contained in this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the conditionally offset portion of the administrative penalty shall become immediately due and payable without demand or notice. The acceleration of any remaining balance constitutes the failure by the City to timely and satisfactorily comply with all the terms of this Agreed Order, and the Executive Director may require the City to pay all or part of the conditionally offset administrative penalty.

### **ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that the City is assessed an administrative penalty in the amount of nine thousand five hundred dollars (\$9,500.00) as set forth in Conclusion of Law No. 5, above, for violations of state statutes and rules of the TCEQ. 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.

2. The City shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067 and as set forth in Conclusion of Law No. 5, above. Nine thousand five hundred dollars (\$9,500.00) of the assessed administrative penalty shall be offset with the condition that the City implement and complete the SEP pursuant to the terms of the SEP as defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement. Administrative penalty payments for any portion of the SEP deemed by the Executive Director as not complete shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: City of Dallas Water Utilities, Docket No. 2009-2053-WQ-E" to:

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

3. The City shall undertake the following technical requirements:
  - a. Within 60 days after the effective date of this Agreed Order, the City shall develop a standard operating procedure to improve interdepartmental communications and timely notifications to the TCEQ, and to clarify reporting and response requirements for personnel; and
  - b. Within 75 days after the effective date of this Agreed Order, the City shall 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. 3.a., above.

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 City shall submit copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Sid Slocum, Water Section Manager  
Texas Commission on Environmental Quality  
Dallas/Fort Worth Regional Office  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

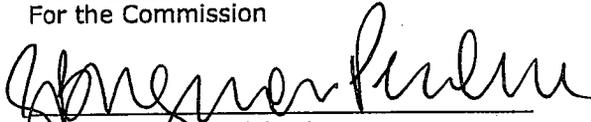
4. All relief not expressly granted in this Agreed Order is denied.
5. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
6. 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 has 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.
7. 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.
8. 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.
9. 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.
10. 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.

11. 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.
12. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date is the date of hand-delivery of this Agreed Order to the City, or three days after the date on which the Commission mails notice of this Agreed Order to the City, whichever is earlier.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

  
For the Executive Director

Date

1/7/2011

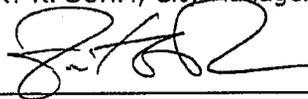
I, the undersigned, have read and understand the attached Agreed Order in the matter of City of Dallas Water Utilities. I represent that I am authorized to agree to the attached Agreed Order on behalf of City of Dallas Water Utilities, and do agree to the specified terms and conditions. I further acknowledge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

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

- A negative impact on the City's compliance history;
- Greater scrutiny of any permit applications submitted by the City;
- 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 against the City;
- Automatic referral to the Attorney General's Office of any future enforcement actions against the City; and
- TCEQ seeking other relief as authorized by law.

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

CITY OF DALLAS,  
A Texas municipal corporation  
MARY K. SUHM, City Manager

By:   
Ryan S. Evans  
First Assistant City Manager, City of Dallas

12/20/2010  
Date

Approved as to Content and to Form:

  
Lemuel B. Thomas  
Assistant City Attorney

**Attachment A**  
**Docket Number: 2009-2053-WQ-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** City of Dallas Water Utilities  
**Penalty Amount:** Nine Thousand Five Hundred Dollars (\$9,500)  
**SEP Offset Amount:** Nine Thousand Five Hundred Dollars (\$9,500)  
**Type of SEP:** Pre-approved SEP  
**Third-Party Recipient:** Texas Association of Resource Conservation & Development Areas, Inc. ("RC&D") – *Water or Wastewater Treatment Assistance*  
**Location of SEP:** Trinity River Basin (preference for Dallas County)

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to **Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")** to be used for the *Water or Wastewater Treatment Assistance* project as set forth in an agreement between the Third-Party Recipient and the TCEQ. Specifically, the SEP Offset Amount will pay for the labor and disposal costs associated with assistance to low-income residents with shallow, improperly designed, or contaminated drinking water wells or failing wastewater systems, or plugging of abandoned wells. If RC&D is unable to spend the total SEP Offset Amount on this project, upon approval of the Executive Director, the remaining SEP Offset Amount may be applied to another approved RC&D project. The projects will be administered in accordance with federal, state, and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

The wastewater portion of this SEP will provide a discernible environmental benefit by preventing the release of sewage into the environment. Raw sewage can carry bacteria, viruses, protozoa (parasitic organisms), helminthes (intestinal worms), and bioaerosols (inhalable molds and fungi). The diseases they may cause range in severity from mild gastroenteritis (causing stomach cramps and diarrhea) to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis. People can be exposed through:

- Sewage in drinking water sources.
- Direct contact in areas of public access such as in lawns or streets, or waters used for recreation.
- Shellfish harvested from areas contaminated by raw sewage.
- Inhalation and skin absorption.

Sewage overflows may cause damage to the environment. A key concern with sewage overflows is the effect on rivers, lakes, streams, or aquifer systems. In addition to potential spread of disease, sewage in the environment contributes excess nutrients, metals, and toxic pollutants that contaminate water quality, cause excess algae blooms, and kill fish and other organisms in aquatic habitats.

The drinking water portion of this project will protect water sources for drinking, recreation and wildlife from contamination from the failing treatment systems, and protect public health from contaminated drinking water supplies.

### C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

## **2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient. The Respondent shall make the contribution check payable to "Texas Association of RC&D" and mail the check with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc. (RC&D)  
1716 Briarcrest Drive, Suite 507  
Bryan, Texas 77802-2700

## **3. Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

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

## **4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall submit a check for any remaining amount due made payable to "Texas Commission on Environmental Quality" with the notation "SEP Refund" and the docket number of the case, and shall send it to:

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

**5. Publicity**

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

**6. Clean Texas Program**

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

**7. Other SEPs by TCEQ or Other Agencies**

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