

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-1528-WQ-E **TCEQ ID:** RN101411171 **CASE NO.:** 40369
RESPONDENT NAME: City of Duncanville

ORDER TYPE:		
<input type="checkbox"/> 166o AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Duncanville, 218 East Daniieldale Road, Duncanville, Dallas County</p> <p>TYPE OF OPERATION: Public water system</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on February 7, 2011. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: Ms. Sarah Huddleston, SEP Coordinator, Litigation Division, MC 173, (512) 239-0622 TCEQ Enforcement Coordinator: Ms. Lanae Foard, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2554; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: The Honorable David L. Green, Mayor, City of Duncanville, P. O. Box 380280, Duncanville, Texas 75138 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: July 15, 2010</p> <p>Date of NOV/NOE Relating to this Case: August 14, 2010 (NOE)</p> <p>Background Facts: This was a records review.</p> <p>WATER</p> <p>1) Failed to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)(1)].</p> <p>2) Failed to provide timely notification to the TCEQ of an accidental discharge which causes pollution [TEX. WATER CODE § 26.039(b)].</p>	<p>Total Assessed: \$9,160</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$9,160</p> <p>Total Paid to General Revenue: \$0</p> <p>Compliance History Classifications: Person/CN - Average Site/RN -</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification:</p> <p>Environmental receptors have been exposed to pollutants which exceed levels that are protective.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. By July 13, 2010, ceased the unauthorized discharge and repaired the water line; and</p> <p>b. By July 15, 2010, removed and disposed of the dead fish.</p> <p>Ordering Provisions:</p> <p>1) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p> <p>2) The Order will also require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, update operational guidance to ensure that the TCEQ Dallas/Fort Worth Regional Office is notified within 24 hours of any unauthorized discharge; and</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): PWS 20033

Attachment A
Docket Number: 2010-1528-WQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Duncanville
Penalty Amount:	Nine Thousand One Hundred Sixty Dollars (\$9,160)
SEP Offset Amount:	Nine Thousand One Hundred Sixty Dollars (\$9,160)
Type of SEP:	Custom – Erosion Control
Location of SEP:	Dallas County

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

1. Project Description

A. Project

The Respondent shall perform an erosion control project in Ten Mile Creek to reduce siltation in Tributary 11 of the Trinity River in Dallas County. This project will consist of the installation of approximately 61 linear feet of slope protection to eliminate ongoing erosion of the creek bank. Beginning at the back of the curb on the southwest corner of the lot at 1106 Spring Lake, along Tributary 11 of Ten Mile Creek, the wall will begin 200 feet east to the west creek top and proceed north-northeast approximately 61 feet to the end point of the wall. The embankment failure is located on the west side of Tributary 11 adjacent to 1106 Spring Lake Drive in Duncanville, Texas. Slope stabilization will be addressed by the installation of R-Rap Walls (also referred to as a Bag Wall installation).

The Respondent shall perform this project in accordance with all federal, state and local environmental laws and regulations. The Respondent agrees to obtain any and all required permit(s), including the Nationwide Permit from the U.S. Corps of Engineers; and the Marl, Sand, Gravel, Shell or Mudshell Permit from the Texas Parks and Wildlife Department prior to commencement of work. The Respondent shall use the SEP Offset Amount only for the direct cost of implementing the project and no portion shall be spent on administrative costs.

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

This SEP will provide a discernible environmental benefit by stabilizing the creek bank and preventing further erosion that would result in sedimentation and siltation in the waterway. The project will reduce erosion, pooling of stagnant water, and downstream sedimentation. Continued erosion leads to high sediment loads in waterways, silting, and disruption of ecosystems. This project will benefit and protect the water quality of Tributary 11, Ten Mile Creek and the Trinity River Basin.

C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A. The Respondent understands that it may cost more than the SEP Offset Amount to complete this project.

2. **Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent shall begin implementation of the SEP. The Respondent shall perform the SEP in accordance with the schedule shown in the Performance Schedule Deliverables table below and shall have completed the SEP in its entirety within one year following the effective date of this Agreed Order.

Days from Effective Order Date	Percentage of Project to be Completed	Performance Schedule Deliverable
30	Begin	Notice of Commencement describing actions taken to begin project.
120	1/2	Submit the Scope of Work for the project; including a map showing the specific area where work will be performed.
365	Completion	Final Completion of SEP with Final Report to be provided within 60 days of completion date, as described in Section 3.B., below.

3. **Reporting**

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, the Respondent shall submit a report to the TCEQ indicating the progress made to date and setting forth a schedule for achieving completion within the time required above.

Days from Effective Order Date	Progress Report Deliverable
30	First Progress Report including Notice of Commencement describing actions being taken to begin project
90	Second Progress Report to provide report of actions taken to implement project.
120	Third Progress Report to provide report of actions taken to implement project, including copy of any and all permits.
210	Fourth Progress Report to provide report of actions taken to implement project, including photographs showing work in progress.
270	Fifth Progress Report to provide report of actions taken to implement project.
365	Notice of SEP Completion, with Final Report to follow within 60 days of completion of project.

B. Final Report

Within 60 days after completion of the project, the Respondent shall submit a report to the TCEQ which includes:

1. An itemized list of expenditures and total of costs incurred
2. Copies of receipts, checks, or other verifying documentation (i.e. permits and Record Drawings, if available) attached;
3. Photographs of the project during implementation of the project and after completion;
4. A map identifying the location of the work performed. The map must be of sufficient detail to allow TCEQ staff to verify the location of the completed project;
5. A statement of quantifiable environmental benefits; and
6. Any additional information that will demonstrate compliance with this Attachment A.

C. Address

The Respondent shall submit all SEP reports and any requested additional information to the following address:

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

4. Additional Information and Access

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

5. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full expenditure 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 include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

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

6. 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.

7. Clean Texas Program

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

8. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other orders 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

DATES	Assigned	23-Aug-2010		
	PCW	15-Sep-2010	Screening	9-Sep-2010
			EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	City of Duncanville		
Reg. Ent. Ref. No.	RN101411171		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	40369	No. of Violations	2
Docket No.	2010-1528-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$11,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1			
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>			
Compliance History	6.0% Enhancement	Subtotals 2, 3, & 7	\$660

Notes: Enhancement recommended for three NOVs with dissimilar violations.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$2,500
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$9
Approx. Cost of Compliance	\$1,750

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$9,160
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$9,160
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$9,160
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$9,160
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Screening Date 9-Sep-2010

Docket No. 2010-1528-WQ-E

PCW

Respondent City of Duncanville

Policy Revision 2 (September 2002)

Case ID No. 40369

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101411171

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

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	3	6%
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) 6%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement recommended for three NOVs with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 6%

Screening Date 9-Sep-2010

Docket No. 2010-1528-WQ-E

PCW

Respondent City of Duncanville

Policy Revision 2 (September 2002)

Case ID No. 40369

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101411171

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.121(a)(1)

Violation Description Failed to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state. Specifically, a water main break on July 13, 2010, at the corner of Big Stone Gap and Carriage Way, discharged approximately 450,000 gallons of potable water into Ten Mile Creek killing approximately 171 fish.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (50%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0%).

Matrix Notes Human health or the environment has been exposed to pollutants which exceed protective levels as a result of this violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 2 Number of violation days 2

Table for frequency: daily (x), weekly, monthly, quarterly, semiannual, annual, single event.

Violation Base Penalty \$10,000

Two daily events are recommended from the date of the discharge (July 13, 2010) to the date the affected area was cleaned (July 15, 2010).

Good Faith Efforts to Comply

25.0% Reduction \$2,500

Table for Good Faith Efforts: Extraordinary, Ordinary (x), N/A.

Notes The Respondent stopped the discharge and cleaned up the affected area by July 15, 2010.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0 Violation Final Penalty Total \$8,100

This violation Final Assessed Penalty (adjusted for limits) \$8,100

Economic Benefit Worksheet

Respondent City of Duncanville
Case ID No. 40369
Reg. Ent. Reference No. RN101411171
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

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	\$1,000	13-Jul-2010	13-Jul-2010	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	13-Jul-2010	15-Jul-2010	0.01	\$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
 Estimated costs to stop the discharge and to clean the affected area, respectively. Date required is the date of the discharge. Final dates are the date the discharge ceased and the date the affected area was cleaned, respectively.

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
 (This section is currently blank)

Approx. Cost of Compliance	\$1,500	TOTAL	\$0
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Screening Date 9-Sep-2010
Respondent City of Duncanville
Case ID No. 40369
Reg. Ent. Reference No. RN101411171
Media [Statute] Water Quality
Enf. Coordinator Lanae Foard

Docket No. 2010-1528-WQ-E

PCW

Policy Revision 2 (September 2002)
 PCW Revision October 30, 2008

Violation Number 2

Rule Cite(s) Tex. Water Code § 26.039(b)

Violation Description
 Failed to provide timely notification to the TCEQ of an accidental discharge which causes pollution. Specifically, the discharge of potable water that occurred on July 13, 2010, was not reported to the TCEQ within 24 hours.

Base Penalty \$10,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> **Programmatic Matrix**

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%
100% of rule requirement was not met.					

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty \$1,000

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$9

Violation Final Penalty Total \$1,060

This violation Final Assessed Penalty (adjusted for limits) \$1,060

Economic Benefit Worksheet

Respondent City of Duncanville
Case ID No. 40369
Reg. Ent. Reference No. RN101411171
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	Overtime Costs	EB Amount
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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	\$250	14-Jul-2010	13-Apr-2011	0.75	\$9	n/a	\$9
Remediation/Disposal				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

Estimated cost to update operational guidance to ensure that unauthorized discharges are reported to the TCEQ within 24 hours. Date required is the date the notification was due. Final date is the expected 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

\$250

TOTAL

\$9

Compliance History Report

Customer/Respondent/Owner-Operator: CN600428205 City of Duncanville Classification: AVERAGE Rating: 2.40

Regulated Entity: RN101411171 CITY OF DUNCANVILLE Classification: Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0570007
 WATER LICENSING LICENSE 0570007

Location: 218 E DANIELDALE RD, DUNCANVILLE, TX, 75137

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: September 15, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 15, 2005 to September 15, 2010

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Lanae Foard Phone: (512) 239-2554

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.
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 02/16/2006 (452385)
- 2 01/30/2008 (611860)
- 3 04/25/2008 (680904)
- 4 04/25/2008 (680913)

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

Date: 02/13/2006 (452385) CN600428205
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)
 Description: Failure to maintain the elevated storage tank on Meadowcrest and the service pump at North Main in a watertight condition.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(4)
 Description: Failure to equip the base of the elevated storage tank on Meadowcrest with an ultrasonic level indicator or a water level indicator gauge which is not less than 3 inches in diameter and calibrated at not more than 2 foot intervals.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(d)(2)(B)
 Description: Failure to maintain a total chlorine residual of at least 0.5 mg/L throughout the distribution.

Date: 04/25/2008 (680913) CN600428205
 Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(2)
 Description: BACT - NONACUTE MCL (5% OR >1)
 Date 04/25/2008 (680904) CN600428205
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(2)
 Description: BACT - NONACUTE MCL (5% OR >1)

- 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF DUNCANVILLE
RN101411171**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2010-1528-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 Duncanville (“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 public water system located at 218 East Daniieldale Road that includes a water line at the intersection of Big Stone Gap and Carriage Way, in Duncanville, Dallas County, Texas (the “Facility”).

2. The Respondent has discharged a pollutant into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During a record review on July 15, 2010, TCEQ staff documented that a water main break occurred on July 13, 2010, at the corner of Big Stone Gap and Carriage Way and discharged approximately 450,000 gallons of potable water into Ten Mile Creek killing approximately 171 fish.
4. During a record review on July 15, 2010, TCEQ staff documented that the discharge of potable water on July 13, 2010 was not reported within 24 hours.
5. The Respondent received notice of the violations on August 19, 2010.
6. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. By July 13, 2010, ceased the unauthorized discharge and repaired the water line; and
 - b. By July 15, 2010, removed and disposed of the dead fish.

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 a pollutant into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1).
3. As evidenced by Findings of Fact No. 4, the Respondent 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 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.
5. An administrative penalty in the amount of Nine Thousand One Hundred Sixty Dollars (\$9,160) 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. Nine Thousand One Hundred Sixty Dollars (\$9,160) shall be conditionally offset by the Respondent's completion of a Supplemental Environmental Project ("SEP").

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 Nine Thousand One Hundred Sixty Dollars (\$9,160) as set forth in Section II, Paragraph 5 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the 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 Duncanville, Docket No. 2010-1528-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 Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 5 above, Nine Thousand One Hundred Sixty Dollars (\$9,160) of the assessed administrative penalty shall be offset with the condition that Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent'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.
3. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, update operational guidance to ensure that the TCEQ Dallas/Fort Worth Regional Office is notified within 24 hours of any unauthorized discharge, in accordance with TEX. WATER CODE § 26.039(b); and
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals

immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.”

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

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

4. 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.
5. If the Respondent 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 Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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.

8. 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.
9. 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.
10. 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.
11. 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

John Szellin
For the Executive Director

Date 11/11/2011

I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Duncanville. I am authorized to agree to the attached Agreed Order on behalf of the City of Duncanville, 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 Duncanville 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.

David L. Green
Signature

12-6-10
Date

David L. Green
Name (Printed or typed)
Authorized Representative of
City of Duncanville

MAYOR
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.

Attachment A
Docket Number: 2010-1528-WQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Duncanville
Penalty Amount:	Nine Thousand One Hundred Sixty Dollars (\$9,160)
SEP Offset Amount:	Nine Thousand One Hundred Sixty Dollars (\$9,160)
Type of SEP:	Custom – Erosion Control
Location of SEP:	Dallas County

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

1. Project Description

A. Project

The Respondent shall perform an erosion control project in Ten Mile Creek to reduce siltation in Tributary 11 of the Trinity River in Dallas County. This project will consist of the installation of approximately 61 linear feet of slope protection to eliminate ongoing erosion of the creek bank. Beginning at the back of the curb on the southwest corner of the lot at 1106 Spring Lake, along Tributary 11 of Ten Mile Creek, the wall will begin 200 feet east to the west creek top and proceed north-northeast approximately 61 feet to the end point of the wall. The embankment failure is located on the west side of Tributary 11 adjacent to 1106 Spring Lake Drive in Duncanville, Texas. Slope stabilization will be addressed by the installation of R-Rap Walls (also referred to as a Bag Wall installation).

The Respondent shall perform this project in accordance with all federal, state and local environmental laws and regulations. The Respondent agrees to obtain any and all required permit(s), including the Nationwide Permit from the U.S. Corps of Engineers; and the Marl, Sand, Gravel, Shell or Mudshell Permit from the Texas Parks and Wildlife Department prior to commencement of work. The Respondent shall use the SEP Offset Amount only for the direct cost of implementing the project and no portion shall be spent on administrative costs.

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

This SEP will provide a discernible environmental benefit by stabilizing the creek bank and preventing further erosion that would result in sedimentation and siltation in the waterway. The project will reduce erosion, pooling of stagnant water, and downstream sedimentation. Continued erosion leads to high sediment loads in waterways, silting, and disruption of ecosystems. This project will benefit and protect the water quality of Tributary 11, Ten Mile Creek and the Trinity River Basin.

C. Minimum Expenditure

The Respondent shall spend at least the SEP Offset Amount to complete the project described above and comply with all other provisions of this Attachment A. The Respondent understands that it may cost more than the SEP Offset Amount to complete this project.

2. **Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent shall begin implementation of the SEP. The Respondent shall perform the SEP in accordance with the schedule shown in the Performance Schedule Deliverables table below and shall have completed the SEP in its entirety within one year following the effective date of this Agreed Order.

Days from Effective Order Date	Percentage of Project to be Completed	Performance Schedule Deliverable
30	Begin	Notice of Commencement describing actions taken to begin project.
120	1/2	Submit the Scope of Work for the project; including a map showing the specific area where work will be performed.
365	Completion	Final Completion of SEP with Final Report to be provided within 60 days of completion date, as described in Section 3.B., below.

3. **Reporting**

A. Progress Reports

Within 90 days after the effective date of this Agreed Order, the Respondent shall submit a report to the TCEQ indicating the progress made to date and setting forth a schedule for achieving completion within the time required above.

Days from Effective Order Date	Progress Report Deliverable
30	First Progress Report including Notice of Commencement describing actions being taken to begin project
90	Second Progress Report to provide report of actions taken to implement project.
120	Third Progress Report to provide report of actions taken to implement project, including copy of any and all permits.
210	Fourth Progress Report to provide report of actions taken to implement project, including photographs showing work in progress.
270	Fifth Progress Report to provide report of actions taken to implement project.
365	Notice of SEP Completion, with Final Report to follow within 60 days of completion of project.

B. Final Report

Within 60 days after completion of the project, the Respondent shall submit a report to the TCEQ which includes:

1. An itemized list of expenditures and total of costs incurred
2. Copies of receipts, checks, or other verifying documentation (i.e. permits and Record Drawings, if available) attached;
3. Photographs of the project during implementation of the project and after completion;
4. A map identifying the location of the work performed. The map must be of sufficient detail to allow TCEQ staff to verify the location of the completed project;
5. A statement of quantifiable environmental benefits; and
6. Any additional information that will demonstrate compliance with this Attachment A.

C. Address

The Respondent shall submit all SEP reports and any requested additional information to the following address:

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

4. Additional Information and Access

The Respondent shall provide any additional information required by TCEQ staff and allow access to all records related to the receipt and expenditure of SEP funds. The Respondent shall also allow a representative of the TCEQ access to the site of any work being financed in whole or in part by SEP funds. This provision survives the termination of this Agreed Order.

5. Failure to Fully Perform

If the Respondent does not perform its obligations under this SEP in any way, including full expenditure 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 include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

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

6. 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.

7. Clean Texas Program

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

8. Other SEPs by TCEQ or Other Agencies

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