

CITY OF BURLESON
RN101387264
Docket No. 2011-1002-WQ-E

Order Type:

Findings Agreed Order

Findings Order Justification:

People or environmental receptors have been exposed to pollutants which exceed levels that are protective (violation 1).

Media:

WQ

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

approximately 500 feet behind 624 Northwest Douglas Street, Burleson, Johnson County

Type of Operation:

wastewater collection system with an associated manhole

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: September 28, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed: \$12,250

Total Paid to General Revenue: \$12,250

Total Due to General Revenue: N/A

SEP Conditional Offset: N/A

Compliance History Classifications:

Person/CN – Average
 Site/RN – N/A

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2002

CITY OF BURLESON
RN101387264
Docket No. 2011-1002-WQ-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: May 14 - 16, 2011
Date(s) of NOV(s): N/A
Date(s) of NOE(s): June 5, 2011

Violation Information

1. Failed to prevent the unauthorized discharge of raw wastewater from the collection system (approx. 200,000 gallons of untreated wastewater flowed from a manhole into North Creek, resulting in a fish kill. Three hundred five (305) dead fish were documented 1,600 feet from the manhole and an additional sixty-four (64) dead fish were found 700 feet further downstream, resulting in a total of three hundred sixty-nine (369) dead fish) [TEX WATER CODE 26.121(c)].
2. Failed to notify appropriate local government officials and the local media within 24 hours of the spill [30 TEX. ADMIN. CODE § 319.302(b)(3) and (c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

1. By May 17, 2011, removed the construction debris, which was deposited by unknown third parties, from the sanitary sewer line, pumped the wastewater between the manhole and creek back into the collection system, flushed the area of the unauthorized discharge, treated the area with bleach solution, aerated the receiving water, and removed the dead fish from North Creek; and
2. On June 28, 2011, updated the Facility's operational guidance and conducted training to ensure that local governmental officials and the local media will be notified of any spills from the collection system.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: December 8, 2011
Date Answer(s) Filed: December 28, 2011
SOAH Referral Date: February 17, 2012
Hearing Date(s):
Preliminary hearing: April 5, 2012 (waived)
Evidentiary hearing: September 12, 2012 (scheduled)
Settlement Date: August 30, 2012

Contact Information

TCEQ Attorneys: Jeffrey Huhn, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
James Murphy, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Stephen Thompson, Enforcement Division, (512) 239-2558

TCEQ Regional Contact: Sid Slocum, DFW Regional Office, (817) 588-5901

Respondent: Ken Shetter, Mayor, City of Burleson, 141 W. Renfro Street, Burleson, Texas 76028-4296

Respondent's Attorney: Daniel Barrett, Taylor Olson L.L.P., 6000 Western Place, Ste. 200, Ft. Worth, Texas 76107-4684



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	13-Jun-2011	Screening	20-Jun-2011	EPA Due	
	PCW	3-Oct-2012				

RESPONDENT/FACILITY INFORMATION			
Respondent	City of Burleson		
Reg. Ent. Ref. No.	RN101387264		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	41886	No. of Violations	2
Docket No.	2011-1002-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Stephen Thompson
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$16,000
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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.

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for compliance history.

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	\$3,750
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$106
Approx. Cost of Compliance	\$10,679

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$12,250
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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	\$12,250
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$12,250
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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	\$12,250
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Screening Date 20-Jun-2011

Docket No. 2011-1002-WQ-E

PCW

Respondent City of Burleson

Policy Revision 2 (September 2002)

Case ID No. 41886

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101387264

Media [Statute] Water Quality

Enf. Coordinator Stephen Thompson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	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 for compliance history.

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

Screening Date 20-Jun-2011

Docket No. 2011-1002-WQ-E

PCW

Respondent City of Burleson

Policy Revision 2 (September 2002)

Case ID No. 41886

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101387264

Media [Statute] Water Quality

Enf. Coordinator Stephen Thompson

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(c)

Violation Description

Failed to prevent the unauthorized discharge of raw wastewater from the collection system. Specifically, on May 14, 2011, approximately 200,000 gallons of untreated wastewater was discharged from a remote manhole located approximately 500 feet behind 624 Northwest Douglas Street and flowed northeast into North Creek. Three hundred five dead fish were documented 1,600 feet from the manhole and an additional 64 dead fish were found 700 feet further downstream, resulting in a total of 369 dead fish in North Creek.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

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

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 3 Number of violation days 3

daily	x
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$15,000

Three daily events are recommended from the initial date of the unauthorized discharge (May 14, 2011) to the date of compliance (May 17, 2011).

Good Faith Efforts to Comply

25.0% Reduction

\$3,750

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

Notes Respondent achieved compliance by completing cleanup by May 17, 2011.

Violation Subtotal \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$11,250

This violation Final Assessed Penalty (adjusted for limits) \$11,250

Economic Benefit Worksheet

Respondent City of Burleson
Case ID No. 41886
Reg. Ent. Reference No. RN101387264
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	\$10,329	14-May-2011	17-May-2011	0.01	\$4	n/a	\$4
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost for the labor and equipment associated with pumping wastewater between the manhole and creek back into the collection system, installing tamper-resistant security bolts, removing the blockage in the line, flushing area of the unauthorized discharge and treating with bleach solution, removing dead fish from creek, and aerating receiving water for six hours. Date required is date the unauthorized discharge began and the final date is the date the unauthorized discharge stopped and cleanup was completed.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance \$10,329

TOTAL \$4

Screening Date 20-Jun-2011

Docket No. 2011-1002-WQ-E

PCW

Respondent City of Burleson

Policy Revision 2 (September 2002)

Case ID No. 41886

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101387264

Media [Statute] Water Quality

Enf. Coordinator Stephen Thompson

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 319.302(b)(3) and (c)

Violation Description Failed to notify appropriate local government officials and the local media within 24 hours of the spill of approximately 200,000 gallons of wastewater from the Respondent's collection system. Specifically, the Respondent became aware of the spill through a telephone call from a citizen around 7 p.m. on May 14, 2011, and did not notify local governmental officials and local media of this event.

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%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 37 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an 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 \$102

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent City of Burleson
Case ID No. 41886
Reg. Ent. Reference No. RN101387264
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	\$250	15-May-2011	28-Jun-2011	0.12	\$2	n/a	\$2
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 for updating the Facility's operational guidance and to conduct training to ensure the submittal of noncompliance notifications as required by the rule. Date required is the date the notice of the spill was due and the final date is the date training was completed.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	15-May-2011	16-May-2011	0.00	\$0	\$100	\$100
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost for providing the required notice to the local governmental officials and the local media. Date required is the date the notice was due and date required is the investigation date.

Approx. Cost of Compliance

\$350

TOTAL

\$102

Compliance History

Customer/Respondent/Owner-Operator: CN600316194 City of Burleson Classification: AVERAGE Rating: 3.01
Regulated Entity: RN101387264 CITY OF BURLESON Classification: Site Rating:
ID Number(s): UTILITIES REGISTRATION 20358
Location: Approximately 500 feet behind 624 NW Douglas St., Burleson, TX
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: June 20, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 20, 2006 to June 20, 2011
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Merrilee Hupp Phone: (512) 239 - 4490

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 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 06/09/2011 (923401)
 - 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF BURLESON;
RN101387264**

**§
§
§
§
§**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2011-1002-WQ-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding City of Burleson ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Daniel Barrett of the law firm Taylor Olson Adkins Sralla Elam L.L.P., presented this Agreed Order to the Commission.

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, Respondent 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 Respondent.

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

FINDINGS OF FACT

1. Respondent owns and operates a wastewater collection system with an associated manhole, located approximately 500 feet behind 624 Northwest Douglas Street in Burleson, Johnson County, Texas (the "Facility"). The Facility adjoins, is contiguous with, surrounds, or is near or adjacent to state water as defined in TEX. WATER CODE § 26.001(5) and 30 TEX. ADMIN. CODE § 297.1(50).
2. During an investigation conducted May 14 - 16, 2011, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent:
 - a. Failed to prevent the unauthorized discharge of raw wastewater from the Facility. Specifically, on May 14, 2011, approximately 200,000 gallons of untreated wastewater was discharged from the Facility and flowed northeast into North Creek, resulting in a fish kill. Three hundred five (305) dead fish were documented 1,600 feet from the manhole and an additional sixty-four

(64) dead fish were found 700 feet further downstream, resulting in a total of three hundred sixty-nine (369) dead fish in North Creek; and

- b. Failed to notify appropriate local government officials and the local media within 24 hours of the discharge of approximately 200,000 gallons of wastewater from the Facility. Specifically, Respondent became aware of the spill through a telephone call from a citizen around 7 p.m. on May 14, 2011, and did not notify local governmental officials and local media of this event.
3. Respondent received notice of the violations on or about June 10, 2011.
 4. The Executive Director acknowledges that, with regard to the violation alleged in Finding of Fact 2.a., Respondent presented evidence and contended that the discharge was caused by the actions of unknown third parties who unbolted the secured manhole and dumped construction debris into the manhole.
 5. The Executive Director recognizes that Respondent implemented the following corrective measures at the Facility:
 - a. By May 17, 2011, removed the construction debris, which was deposited by unknown third parties, from the sanitary sewer line, pumped the wastewater between the manhole and creek back into the collection system, flushed the area of the unauthorized discharge, treated the area with bleach solution, aerated the receiving water, and removed the dead fish from North Creek;
 - b. Installed tamper-resistant security bolts on the manhole cover; and
 - c. On June 28, 2011, updated the Facility's operational guidance and conducted training to ensure that local governmental officials and the local media will be notified of any spills from the collections system in accordance with 30 TEX. ADMIN. CODE § 319.302(b)(3) and (c).

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent 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, Respondent failed to prevent the unauthorized discharge of raw wastewater from the Facility, in violation of TEX. WATER CODE § 26.121(c).
3. As evidenced by Finding of Fact No. 3, Respondent failed to notify appropriate local government officials and the local media within 24 hours of the discharge, in violation of 30 TEX. ADMIN. CODE § 319.302(b)(3) and (c).
4. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent 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 twelve thousand two hundred fifty dollars (\$12,250) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in Tex. Water Code § 7.053. Respondent paid twelve thousand two hundred fifty dollars (\$12,250) of the administrative penalty.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty 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 Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the matters set forth by this Agreed Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here.
2. All relief not expressly granted in this Agreed Order is denied.
3. The provisions of this Agreed Order shall apply to and be binding upon Respondent. Respondent 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.
4. If 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, Respondent's failure to comply is not a violation of this Agreed Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director.
6. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that 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 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.

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Handwritten Signature]

For the Executive Director

October 12, 2012

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of City of Burleson, and I do agree to the terms and conditions specified therein. 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 Agreed 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.

Dale Cheatham

Signature

30 August 12

Date

Dale Cheatham

Name (Printed or typed)
Authorized representative of
City of Burleson

City Manager

Title