

Executive Summary – Enforcement Matter – Case No. 42879

City of Austin

RN101607901

Docket No. 2011-2019-MWD-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Environmental receptors have been exposed to pollutants which exceed levels that are protective resulting in a fish kill.

Media:

MWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

Walnut Creek WWTP, located approximately one mile east of the intersection of Farm-to-Market ("FM") Road 969 and United States Highway 183, on the south side of FM Road 969, Travis County

Type of Operation:

Wastewater treatment facility

Other Significant Matters:

Additional Pending Enforcement Actions: Yes, Compliance Agreement (CCEDS Case No. 39762)

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: March 2, 2012

Comments Received: No

Penalty Information

Total Penalty Assessed: \$13,050

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$13,050

Name of SEP: Austin Parks Foundation - Restoration and Rehabilitation of the Barton Springs Bypass Tunnel

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

Executive Summary – Enforcement Matter – Case No. 42879
City of Austin
RN101607901
Docket No. 2011-2019-MWD-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: September 27, 2011
Date(s) of NOE(s): October 20, 2011

Violation Information

Failed to prevent an unauthorized discharge of wastewater from the collection system into water in the state [Texas Pollutant Discharge Elimination System Permit No. WQ0010543011, Permit Conditions No. 2.g., 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

By September 28, 2011, the Respondent repaired the manhole located at 8800 North Interstate Highway 35, remediated the affected area and properly disposed of the wastewater collected from the unauthorized discharge.

Technical Requirements:

The Order will require the Respondent to implement and complete a Supplemental Environmental Project (“SEP”). (See SEP Attachment A)

Litigation Information

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

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Debra Barber, Enforcement Division, MC 219, (512) 239-0412
TCEQ SEP Coordinator: Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565
Respondent: Greg Meszaros, Director, City of Austin, P.O. Box 1088, Austin, Texas 78767
Respondent's Attorney: N/A

Attachment A
Docket Number: 2011-2019-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Austin

Penalty Amount: Thirteen Thousand Fifty Dollars (\$13,050)

SEP Offset Amount: Thirteen Thousand Fifty Dollars (\$13,050)

Type of SEP: Pre-approved

Third-Party Recipient: Austin Parks Foundation

Project Name: Restoration and Rehabilitation of the Barton Springs Bypass Tunnel

Location of SEP: Bastrop, Blanco, Burnett, Caldwell, Fayette, Hays, Lee, Llano, Travis, and Williamson Counties

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 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 contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to the **Austin Parks Foundation** for the *Restoration and Rehabilitation of the Barton Springs Pool Bypass Tunnel*. The contribution will be used in accordance with the Supplemental Environmental Project Agreement between the Third-Party Recipient and the TCEQ (the "Project"). The deteriorated condition of the Barton Springs Pool Bypass tunnel results in a significant increase of pollutants from urban runoff into the pool. Specifically, this SEP will restore and rehabilitate the Barton Springs Pool bypass tunnel inlet grate and outlet valve by providing funds for the engineering design, materials and construction activities to repair the tunnel.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

The Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This Project benefits water quality by reducing the amount of pollutants reaching the environment.

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 mail the contribution, with a copy of the Agreed Order to:

Austin Parks Foundation
Charlie McCabe, Executive Director
816 Congress Avenue
Austin, Texas 78701

3. Records and Reporting

Concurrent with the payment of the SEP offset amount, the Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP offset amount due to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality
Enforcement Division
Attention: SEP Coordinator, MC 219
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP agreement in any way, including full expenditure of the SEP offset amount and submittal of the required

reporting described in Sections 2 and 3 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP offset amount.

In the event the ED determines that the Respondent failed to complete the project, the Respondent shall remit payment for all or a portion of the SEP offset amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. The Respondent shall make the check payable to "Texas Commission on Environmental Quality" and shall mail 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 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	24-Oct-2011	Screening	1-Nov-2011	EPA Due	
	PCW	2-Nov-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Austin				
Reg. Ent. Ref. No.	RN101607901				
Facility/Site Region	11-Austin	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	42879	No. of Violations	1
Docket No.	2011-2019-MWD-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Jorge Ibarra, P.E.
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

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

Notes

Culpability Enhancement **Subtotal 4**

Notes

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

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts
 Approx. Cost of Compliance
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 1-Nov-2011

Docket No. 2011-2019-MWD-E

PCW

Respondent City of Austin

Policy Revision 3 (September 2011)

Case ID No. 42879

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101607901

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

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>)	2	10%
	Other written NOVs	1	2%
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%

Please Enter Yes or No

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

Adjustment Percentage (Subtotal 2) 12%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations, one NOV with dissimilar violations, and one month of self-reported effluent violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 12%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 12%

Screening Date 1-Nov-2011

Docket No. 2011-2019-MWD-E

PCW

Respondent City of Austin

Policy Revision 3 (September 2011)

Case ID No. 42879

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101607901

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 1

Rule Cite(s)

Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0010543011, Permit Conditions No. 2.g., 30 Tex. Admin. Code § 305.125(1), and Tex. Water Code § 26.121(a)

Violation Description

Failed to prevent an unauthorized discharge of wastewater from the collection system into water in the state. Specifically, on September 27, 2011, it was documented that approximately 45,000 gallons of untreated wastewater was discharged from a manhole located at 8800 North Interstate Highway 35 into Little Walnut Creek, resulting in approximately 30 dead fish.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent 30.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Failure to prevent an unauthorized discharge of wastewater into water in the state resulted in the release of pollutants which exceeded levels that are protective of human health and the environment.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 2

2 Number of violation days

daily	x
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$15,000

Two daily events are recommended, from the date of the discharge (September 27, 2011) to the date clean-up was completed (September 28, 2011).

Good Faith Efforts to Comply

25.0% Reduction

\$3,750

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

Notes The Respondent achieved compliance by September 28, 2011 for this violation.

Violation Subtotal \$11,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$13,050

This violation Final Assessed Penalty (adjusted for limits) \$13,050

Economic Benefit Worksheet

Respondent City of Austin
Case ID No. 42879
Req. Ent. Reference No. RN101607901
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	\$5,000	27-Sep-2011	28-Sep-2011	0.00	\$1	n/a	\$1
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to repair the manhole, to remediate the affected area and to properly dispose of the wastewater collected from the unauthorized discharge. Date required is the date of the discharge and the final date is the compliance date.

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

\$5,000

TOTAL

\$1

Compliance History

Customer/Respondent/Owner-Operator:	CN600135198	City of Austin	Classification: AVERAGE	Rating: 2.92
Regulated Entity:	RN101607901	WALNUT CREEK WWTP	Classification: AVERAGE	Site Rating: 0.72
ID Number(s):	WASTEWATER	EPA ID		TX0046981
	WASTEWATER	PERMIT		WQ0010543011
	WASTEWATER LICENSING	LICENSE		WQ0010543011
	STORMWATER	PERMIT		TXR05W474
Location:	Approximately one mile east of the intersection of Farm-to-Market ("FM") Road 969 and United States Highway 183, on the south side of FM Road 969 in Travis County, Texas			
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	November 01, 2011			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 01, 2006 to November 01, 2011			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Jorge Ibarra, P.E.	Phone:	(817) 588-5890	

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: 9/1/2011 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
 - See addendum for information regarding federal actions.
- 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	11/14/2006	(517417)
2	12/28/2007	(574085)
3	02/21/2007	(580387)
4	03/21/2007	(580390)
5	04/23/2007	(580393)
6	05/17/2007	(580396)
7	06/19/2007	(580399)
8	03/23/2007	(580402)
9	11/20/2006	(580410)
10	12/22/2006	(580413)
11	02/22/2007	(580415)
12	09/20/2007	(608033)
13	10/18/2007	(608034)
14	09/26/2007	(608035)
15	01/29/2008	(614961)

16	08/19/2008	(687735)
17	08/15/2008	(688342)
18	09/18/2008	(702744)
19	04/10/2009	(741268)
20	07/03/2009	(759298)
21	02/19/2008	(769807)
22	02/23/2009	(769808)
23	03/23/2009	(769809)
24	03/21/2008	(769810)
25	04/21/2008	(769811)
26	04/20/2009	(769812)
27	05/19/2008	(769813)
28	06/19/2008	(769814)
29	07/21/2008	(769815)
30	04/27/2009	(769816)
31	08/15/2007	(769817)
32	08/19/2008	(769818)
33	09/22/2008	(769819)
34	09/19/2008	(769820)
35	11/19/2007	(769821)
36	11/19/2008	(769822)
37	01/02/2008	(769823)
38	12/22/2008	(769824)
39	01/21/2009	(769825)
40	10/26/2009	(780017)
41	05/10/2010	(801921)
42	06/23/2010	(825372)
43	08/11/2010	(841718)
44	06/15/2010	(846749)
45	07/14/2010	(861275)
46	10/28/2010	(864754)
47	08/12/2010	(867424)
48	04/30/2010	(869849)
49	09/13/2010	(874447)
50	08/31/2010	(882029)
51	11/19/2010	(888504)
52	12/13/2010	(896828)
53	01/13/2011	(902796)
54	02/14/2011	(909634)
55	03/14/2011	(916856)
56	02/12/2010	(926524)
57	03/12/2010	(926525)
58	04/13/2010	(926526)
59	04/12/2011	(926527)
60	05/19/2009	(926528)
61	05/11/2010	(926529)
62	06/18/2009	(926530)
63	05/04/2010	(926531)
64	09/17/2009	(926532)

65	10/21/2009	(926533)
66	11/20/2009	(926534)
67	12/15/2009	(926535)
68	10/20/2009	(926536)
69	05/13/2011	(938569)
70	06/13/2011	(945941)
71	07/12/2011	(953196)
72	09/22/2011	(959837)
73	10/18/2011	(962749)

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

Date:	06/30/2008 (769815)	CN600135198
Self Report?	YES	Classification: Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)	
Description:	Failure to meet the limit for one or more permit parameter	
Date:	08/18/2008 (688342)	CN600135198
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)	
Description:	Failure to maintain the daily maximum permit limit of 10 mg/L for ammonia-nitrogen. On June 28, 2008, the daily maximum value for ammonia-nitrogen was 13.4 mg/L.	
Date:	04/30/2010 (869849)	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) 30 TAC Chapter 305, SubChapter F 305.125(17)	
Description:	NON-RPT VIOS FOR MONIT PER OR PIPE	

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF AUSTIN
RN101607901**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2011-2019-MWD-E

At its _____ agenda, the Texas Commission on Environmental Quality (“the Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding the City of Austin (“the Respondent”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

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

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

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

I. FINDINGS OF FACT

1. The Respondent owns and operates a wastewater treatment facility located approximately one mile east of the intersection of Farm-to-Market (“FM”) Road 969 and United States Highway 183, on the south side of FM Road 969 in Travis County, Texas (the “Facility”).

2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation conducted on September 27, 2011, TCEQ staff documented that approximately 45,000 gallons of untreated wastewater was discharged from a manhole located at 8800 North Interstate Highway 35 into Little Walnut Creek, resulting in approximately 30 dead fish.
4. The Respondent received notice of the violations on October 25, 2011.
5. The Executive Director recognizes that by September 28, 2011, the Respondent repaired the manhole located at 8800 North Interstate Highway 35, remediated the affected area and properly disposed of the wastewater collected from the unauthorized discharge.

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 an unauthorized discharge of wastewater from the collection system into water in the state, in violation of Texas Pollutant Discharge Elimination System Permit No. WQ0010543011, Permit Conditions No. 2.g., 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Thirteen Thousand Fifty Dollars (\$13,050) 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. Thirteen Thousand Fifty Dollars (\$13,050) 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 Thirteen Thousand Fifty Dollars (\$13,050) as set forth in Section II, Paragraph 4 above, for

violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Austin, Docket No. 2011-2019-MWD-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

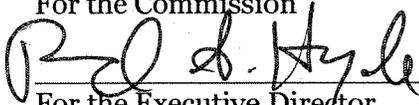
2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 4 above, Thirteen Thousand Fifty Dollars (\$13,050) of the assessed administrative penalty shall be offset with the condition that the Respondent implement the SEP defined 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 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.
4. 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.
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 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.
6. 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.

7. 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.
8. 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.
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. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

Date 3/23/12

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

I understand that by entering into this Agreed Order, the City of Austin waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

Signature


Name (Printed or typed)
Greg Meszanos
Authorized Representative of
City of Austin

Date 1/25/12

Title Director

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: 2011-2019-MWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: City of Austin

Penalty Amount: Thirteen Thousand Fifty Dollars (\$13,050)

SEP Offset Amount: Thirteen Thousand Fifty Dollars (\$13,050)

Type of SEP: Pre-approved

Third-Party Recipient: Austin Parks Foundation

Project Name: Restoration and Rehabilitation of the Barton Springs Bypass Tunnel

Location of SEP: Bastrop, Blanco, Burnett, Caldwell, Fayette, Hays, Lee, Llano, Travis, and Williamson Counties

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 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 contribute the SEP offset amount to the Third-Party Recipient named above. The contribution will be to the **Austin Parks Foundation** for the *Restoration and Rehabilitation of the Barton Springs Pool Bypass Tunnel*. The contribution will be used in accordance with the Supplemental Environmental Project Agreement between the Third-Party Recipient and the TCEQ (the “Project”). The deteriorated condition of the Barton Springs Pool Bypass tunnel results in a significant increase of pollutants from urban runoff into the pool. Specifically, this SEP will restore and rehabilitate the Barton Springs Pool bypass tunnel inlet grate and outlet valve by providing funds for the engineering design, materials and construction activities to repair the tunnel.

All dollars contributed will be used solely for the direct cost of the Project and no portion will be spent on administrative costs. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

The Respondent's signature affixed to this Agreed Order certifies that it has no prior commitment to make this contribution and that it is being contributed solely in an effort to settle this enforcement action.

B. Environmental Benefit

This Project benefits water quality by reducing the amount of pollutants reaching the environment.

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 mail the contribution, with a copy of the Agreed Order to:

Austin Parks Foundation
Charlie McCabe, Executive Director
816 Congress Avenue
Austin, Texas 78701

3. Records and Reporting

Concurrent with the payment of the SEP offset amount, the Respondent shall provide the Enforcement Division SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP offset amount due to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality
Enforcement Division
Attention: SEP Coordinator, MC 219
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP agreement in any way, including full expenditure of the SEP offset amount and submittal of the required

reporting described in Sections 2 and 3 above, the Executive Director (“ED”) may require immediate payment of all or part of the SEP offset amount.

In the event the ED determines that the Respondent failed to complete the project, the Respondent shall remit payment for all or a portion of the SEP offset amount, as determined by the ED, and shall include on the check the docket number of this Agreed Order and note that it is for reimbursement of a SEP. The Respondent shall make the check payable to “Texas Commission on Environmental Quality” and shall mail 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.