

**Executive Summary – Enforcement Matter – Case No. 44352**

**City of Arlington**

**RN101385714**

**Docket No. 2012-1267-WQ-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

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

**Media:**

WQ

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Pierce Burch Water Treatment Plant, 1901 Lakewood Drive, Arlington, Tarrant County

**Type of Operation:**

Public water supply system

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** December 28, 2012

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$7,125

**Amount Deferred for Expedited Settlement:** \$0

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$7,125

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Average

Site/RN - Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2011

**Executive Summary – Enforcement Matter – Case No. 44352**  
**City of Arlington**  
**RN101385714**  
**Docket No. 2012-1267-WQ-E**

***Investigation Information***

**Complaint Date(s):** N/A  
**Complaint Information:** N/A  
**Date(s) of Investigation:** February 24, 2012  
**Date(s) of NOE(s):** April 10, 2012

***Violation Information***

Failed to prevent the discharge of a pollutant into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)(2)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

Respondent contained the discharge, made repairs to the System, and collected and properly disposed of the dead fish.

**Technical Requirements:**

N/A

***Litigation Information***

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

***Contact Information***

**TCEQ Attorney:** N/A  
**TCEQ Enforcement Coordinator:** Steve Villatoro, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4930; Debra Barber, Enforcement Division, MC 219, (512) 239-0412  
**TCEQ SEP Coordinator:** N/A  
**Respondent:** The Honorable Julia Hunt, Mayor, City of Arlington, 101 West Abram Street, Arlington, Texas 76010; Terry Benton, Interim Director, Water Utilities, City of Arlington, P.O. Box 90231, Arlington, Texas 76004  
**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	16-Apr-2012	<b>Screening</b>	30-Apr-2012	<b>EPA Due</b>	
	<b>PCW</b>	14-Jun-2012				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	City of Arlington		
<b>Reg. Ent. Ref. No.</b>	RN101385714		
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	44352	<b>No. of Violations</b>	1
<b>Docket No.</b>	2012-1267-WQ-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Steve Villatoro
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$7,500</b>
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<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>		
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.		
<b>Compliance History</b>	20.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b> <b>\$1,500</b>

Notes: Enhancement for one order with denial.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$1,875</b>
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts: \$1  
 Approx. Cost of Compliance: \$4,500  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$7,125</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	<b>\$7,125</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$7,125</b>
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	<b>\$0</b>
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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.

<b>PAYABLE PENALTY</b>	<b>\$7,125</b>
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Screening Date 30-Apr-2012

Docket No. 2012-1267-WQ-E

PCW

Respondent City of Arlington

Policy Revision 3 (September 2011)

Case ID No. 44352

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101385714

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

### 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> )	1	20%
	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)** 20%

>> 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 order with denial.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 20%

>> Final Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** 20%

**Screening Date** 30-Apr-2012  
**Respondent** City of Arlington  
**Case ID No.** 44352

**Docket No.** 2012-1267-WQ-E

**PCW**

Policy Revision 3 (September 2011)  
 PCW Revision August 3, 2011

**Reg. Ent. Reference No.** RN101385714  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Steve Villatoro

**Violation Number** 1

**Rule Cite(s)** Tex. Water Code § 26.121(a)(2)

**Violation Description** Failed to prevent the discharge of a pollutant into or adjacent to water in the state, as documented during a record review conducted on February 24, 2012. Specifically, a water main break on February 22, 2012 at 3:52 AM, at the intersection of Bowen Road and Ventura Street, discharged approximately 600,000 gallons of potable water into Rush Creek killing approximately 539 fish.

**Base Penalty** \$25,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual		x			30.0%
Potential					

**>> Programmatic Matrix**

Matrix Notes	Falsification				Percent
	Major	Moderate	Minor		
Human health or the environment has been exposed to pollutants which exceed levels protective of environmental receptors.					0.0%

**Adjustment** \$17,500

\$7,500

**Violation Events**

Number of Violation Events 1 1 Number of violation days

mark only one with an x

daily	x
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	

**Violation Base Penalty** \$7,500

One daily event is recommended from the date of the discharge (February 22, 2012) to the date of compliance (February 23, 2012).

**Good Faith Efforts to Comply**

25.0% Reduction  
 Before NOV NOV to EDPRP/Settlement Offer

\$1,875

Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes: The Respondent returned to compliance on February 23, 2012.

**Violation Subtotal** \$5,625

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$1

**Violation Final Penalty Total** \$7,125

**This violation Final Assessed Penalty (adjusted for limits)** \$7,125

## Economic Benefit Worksheet

**Respondent** City of Arlington  
**Case ID No.** 44352  
**Reg. Ent. Reference No.** RN101385714  
**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
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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	\$3,500	22-Feb-2012	23-Feb-2012	0.00	\$0	\$1	\$1
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	\$1,000	22-Feb-2012	23-Feb-2012	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 contain the discharge, make repairs to the the water main, and collect and properly dispose of dead fish. Date required is the date of the discharge. Final date is the 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

\$4,500

**TOTAL**

\$1

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600131791 City of Arlington Classification: AVERAGE Rating: 5.18

Regulated Entity: RN101385714 PIERCE BURCH WATER TREATMENT PLANT Classification: AVERAGE Site Rating: 11.25

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2200001  
PETROLEUM STORAGE TANK REGISTRATION 43866  
WATER LICENSING LICENSE 2200001  
STORMWATER PERMIT TXR15SP83

Location: 1901 Lakewood Drive, Alrington, Tarrant County, Texas

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: June 15, 2012

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 15, 2007 to June 15, 2012

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

Name: Steve Villatoro Phone: (512) 239-4930

## 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. If YES, 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.

Effective Date: 08/27/2011 ADMINORDER 2011-0134-PST-E

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.3475(c)(1)  
30 TAC Chapter 334, SubChapter C 334.50(b)(1)(A)

Description: Failed to monitor USTs at the Pierce Burch Water Treatment Plant Facility for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring).

- 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	08/17/2009	(763258)
2	09/24/2009	(777122)
3	04/01/2010	(790898)
4	01/04/2011	(878941)
5	04/13/2012	(996271)

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

N/A

- F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF ARLINGTON  
RN101385714

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2012-1267-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 Arlington ("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 supply system located at 1901 Lakewood Drive that includes water lines at the intersection of Bowden Road and Ventura Street in Arlington, Tarrant County, Texas (the "System").

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 conducted on February 24, 2012, TCEQ staff documented a water main break on February 22, 2012 at 3:52 AM, at the intersection of Bowen Road and Ventura Street, which resulted in the discharge of approximately 600,000 gallons of potable water into Rush Creek killing approximately 539 fish.
4. The Respondent received notice of the violations on April 16, 2012.
5. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the System:
  - a. On February 22, 2012, contained the discharge and made repairs to the System; and
  - b. On February 23, 2012, collected and properly 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 discharge of a pollutant into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(2).
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 Seven Thousand One Hundred Twenty-Five Dollars (\$7,125) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Seven Thousand One Hundred Twenty-Five Dollar (\$7,125) administrative penalty.

### III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Seven Thousand One Hundred Twenty-Five Dollars (\$7,125) 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 Arlington, Docket No. 2012-1267-WQ-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the System operations referenced in this Agreed Order.
3. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
4. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature

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

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

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

Pam Dawe Jr  
For the Executive Director

2/18/13  
Date

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

12/26/12  
Date

Team Benton  
Name (Printed or typed)  
Authorized Representative of  
City of Arlington

Interim Director  
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.