Executive Summary – Enforcement Matter – Case No. 45525
Northtown Municipal Utility District
RN102178142
Docket No. 2012-2391-WQ-E

Order Type:
Findings Agreed Order
Findings Order Justification:
Fish Kill
Media:
WQ
Small Business:
No
Location(s) Where Violation(s) Occurred:
Northtown MUD, located at 14251 Harris Ridge, Travis County
Type of Operation:
Wastewater collection system with an associated lift station
Other Significant Matters:
Additional Pending Enforcement Actions: No
Past-Due Penalties: No
Other: N/A
Interested Third-Parties: None
Texas Register Publication Date: March 8, 2013
Comments Received: No

Penalty Information

Total Penalty Assessed: $4,875
Amount Deferred for Expedited Settlement: $0
Amount Deferred for Financial Inability to Pay: $0
Total Paid to General Revenue: $4,875
Total Due to General Revenue: $0
Payment Plan: N/A
SEP Conditional Offset: $0
Name of SEP: N/A
Compliance History Classifications:
Person/CN - High
Site/RN - High
Major Source: No
Statutory Limit Adjustment: N/A
Applicable Penalty Policy: September 2011

Executive Summary – Enforcement Matter – Case No. 45525
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Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: September 25, 2012
Date(s) of NOE(s): November 9, 2012

Violation Information

Failed to prevent the unauthorized discharge of wastewater from the System into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

By September 25, 2012, Respondent implemented the following corrective measures:

a. Repaired the force main located at the lift station located at 14251 Harris Ridge; and

b. Used a vacuum truck to collect and properly dispose of the discharge.

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: Robin Campbell, President, Northtown Municipal Utility District, 100 Congress Avenue, Suite 1300, Austin, Texas 78701
Sue Brooks Littlefield, Attorney, Northtown Municipal Utility District, 100 Congress Avenue, Suite 1300, Austin, Texas 78701
Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES					
Assigned	12-Nov-2012				
PCW	16-Nov-2012	Screening	15-Nov-2012	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Northtown Municipal Utility District		
Reg. Ent. Ref. No.	RN102178142		
Facility/Site Region	11-Austin	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	45525	No. of Violations	1
Docket No.	2012-2391-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Steve Villatoro
		EC's Team	Enforcement Team 1

Admin. Penalty $ Limit Minimum $0 Maximum $25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $7,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History -10.0% Enhancement *Subtotals 2, 3, & 7* -$750

Notes: Reduction for high performer classification.

Culpability No 0.0% Enhancement *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments *Subtotal 5* $1,875

Economic Benefit 0.0% Enhancement* *Subtotal 6* $0

Total EB Amounts $1

Approx. Cost of Compliance $5,500

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* $4,875

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $4,875

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* $4,875

DEFERRAL 0.0% Reduction *Adjustment* $0

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 $4,875

Screening Date 15-Nov-2012 **Docket No.** 2012-2391-WQ-E

PCW

Respondent Northtown Municipal Utility District

Policy Revision 3 (September 2011)

Case ID No. 45525

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102178142

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 (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	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 (*number of judgements or consent decrees meeting criteria*)	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 (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	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 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> Compliance History Summary

Compliance History Notes

Reduction for high performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -10%

>> Final Compliance History Adjustment

Final Adjustment Percentage ****capped at 100%*** -10%

Screening Date 15-Nov-2012 **Docket No.** 2012-2391-WQ-E **PCW**

Respondent Northtown Municipal Utility District *Policy Revision 3 (September 2011)*

Case ID No. 45525 *PCW Revision August 3, 2011*

Reg. Ent. Reference No. RN102178142

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

Violation Number 1

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

Violation Description Failed to prevent the unauthorized discharge of wastewater from the collection system into or adjacent to water in the state, as documented during an investigation conducted on September 25, 2012. Specifically, On September 24, 2012, a force main break resulted in the discharge of 3,000 gallons of untreated wastewater into Harris Branch killing approximately 100 fish.

Base Penalty $25,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual	x		
Potential			

OR

Percent 30.0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes: 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 $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 for the date of the discharge (September 24, 2012). The discharge was ceased and immediate actions were taken to address the violation within 24 hours.

Good Faith Efforts to Comply

25.0% Reduction $1,875

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

Notes: The Respondent returned to compliance by September 25, 2012.

Violation Subtotal $5,625

Economic Benefit (EB) for this violation

Estimated EB Amount $1

Statutory Limit Test

Violation Final Penalty Total $4,875

This violation Final Assessed Penalty (adjusted for limits) $4,875

Economic Benefit Worksheet

Respondent Northtown Municipal Utility District
Case ID No. 45525
Reg. Ent. Reference No. RN102178142
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction	$4,500	24-Sep-2012	25-Sep-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	24-Sep-2012	25-Sep-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 costs to make repairs to the force main and use a vacuum truck to collect and properly dispose of the wastewater. 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 $5,500

TOTAL $1

The TCEQ is committed to accessibility.
To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.

Compliance History Report

PUBLISHED Compliance History Report for CN601178726, RN102178142, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator:	CN601178726, Northtown Municipal Utility District	**Classification:** HIGH	**Rating:** 0.00
Regulated Entity:	RN102178142, NORTHTOWN MUD	**Classification:** HIGH	**Rating:** 0.00

Complexity Points: 0 **Repeat Violator:** NO

CH Group: 08 - Sewage Treatment Facilities

Location: Collection System with an associated lift station located at 14251 Harris Ridge, Travis County, Texas

TCEQ Region: REGION 11 - AUSTIN

ID Number(s):

Compliance History Period: September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

Date Compliance History Report Prepared: November 16, 2012

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: November 16, 2007 to November 16, 2012

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

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

Site and Owner/Operator History:

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 for #2, who is the current owner/operator?	N/A
4) If YES for #2, 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

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:
N/A

B. Criminal convictions:
N/A

C. Chronic excessive emissions events:
N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):
N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):
A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

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

Published *Compliance History Report for CN601178726, RN102178142, Rating Year 2012 which includes Compliance History (CH) components from November 16, 2007, through November 16, 2012.*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	**§**	**BEFORE THE**
ENFORCEMENT ACTION	**§**	
CONCERNING	**§**	**TEXAS COMMISSION ON**
NORTHTOWN MUNICIPAL UTILITY	**§**	
DISTRICT	**§**	
RN102178142	**§**	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2012-2391-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 Northtown Municipal Utility District ("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 a wastewater collection system with an associated lift station located at 14251 Harris Ridge in Travis County, Texas (the "System").

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 25, 2012, TCEQ staff documented a force main break, which occured on September 24, 2012, resulted in the unauthorized discharge of 3,000 gallons of untreated wastewater into Harris Branch killing approximately 100 fish.

4. The Respondent received notice of the violations on November 14, 2012.

5. The Executive Director recognizes that by September 25, 2012, the Respondent implemented the following corrective measures at the System:

   a. Repaired the force main located at the lift station located at 14251 Harris Ridge; and

   b. Used a vacuum truck to collect and properly dispose of the 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 the unauthorized discharge of wastewater from the System into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), as documented during an investigation conducted on September 25, 2012.

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 Four Thousand Eight Hundred Seventy-Five Dollars ($4,875) 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 Four Thousand Eight Hundred Seventy-Five Dollar ($4,875) 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 Four Thousand Eight Hundred Seventy-Five Dollars ($4,875) 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: Northtown Municipal Utility District, Docket No. 2012-2391-WQ-E" to:

   Financial Administration Division, Revenue Operations 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

_____ 3/14/13
For the Executive Director Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Northtown Municipal Utility District. I am authorized to agree to the attached Agreed Order on behalf of Northtown Municipal Utility District, 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, Northtown Municipal Utility District 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.

NORTHTOWN MUNICIPAL UTILITY DISTRICT

By: _____ 1·28·2013
Signature Date

Sue Brooks Littlefield Attorney
Name (Printed or typed) Title
Authorized Representative of
Northtown Municipal Utility District

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section III, Paragraph 1 of this Agreed Order.