

Executive Summary – Enforcement Matter – Case No. 46263

City of Arlington

RN104950134

Docket No. 2013-0373-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:

City of Arlington Collection System, 101 West Abram Street, Arlington, Tarrant County; the associated manhole is located near the intersection of Cooper Street and Nedderman Drive, Arlington, Tarrant County

Type of Operation:

Wastewater collection system with an associated manhole

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: October 18, 2013

Comments Received: No

Penalty Information

Total Penalty Assessed: \$13,125

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: \$13,125

Name of SEP: Custom

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Unsatisfactory

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Executive Summary – Enforcement Matter – Case No. 46263

City of Arlington

RN104950134

Docket No. 2013-0373-WQ-E

Date(s) of Investigation: December 3, 2012

Date(s) of NOE(s): February 1, 2013

Violation Information

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

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent has implemented the following corrective measures:

- a. On December 3, 2012, located and removed the sewer line blockage, ceased the discharge by pumping the wastewater back into the collection system, deployed two aerators into the pond, and began extracting the dead fish from the creek and pond;
- b. By December 4, 2012, collected and returned to the collection system approximately 30,240 gallons of wastewater, completed the sewer line repairs, and ceased pumping;
- c. On December 6, 2012, completed the removal and disposal of the dead fish and remediated the affected area by flushing with de-chlorinated potable water; and
- d. By December 7, 2012, confirmed that pollutant levels in the pond had been returned to levels protective of the environment.

Technical Requirements:

The Order will require 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: Lanae Foard, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2554; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

Executive Summary – Enforcement Matter – Case No. 46263

City of Arlington

RN104950134

Docket No. 2013-0373-WQ-E

TCEQ SEP Coordinator: Stephanie Frazee, SEP Coordinator, Litigation Division,
MC 175, (512) 239-3693

Respondent: Walter J. Pishkur, Director, City of Arlington, 101 West Abram Street,
Arlington, Texas 76004

The Honorable Robert N. Cluck, Mayor, City of Arlington, 101 West Abram Street,
Arlington, Texas 76004

Respondent's Attorney: N/A

Attachment A
Docket Number: 2013-0373-WQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Arlington
Penalty Amount:	Thirteen Thousand One Hundred Twenty-Five Dollars (\$13,125)
SEP Offset Amount:	Thirteen Thousand One Hundred Twenty-Five Dollars (\$13,125)
Type of SEP:	Custom
Project Name:	<i>Residential Backflow Protection Testing, Repair, or Replacement</i>
Location of SEP:	Tarrant County

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

1. Project Description

A. Project

Respondent shall provide backflow testing, repair, or replacement for low-hazard assemblies for residential users on irrigation systems. Respondent shall hire a contractor to test, repair, or replace low-hazard assemblies at no cost to the resident (the “Project”). Respondent agrees to obtain any and all required permit(s) prior to commencement of the project. Any advertisement, including publication, related to the SEP must include the enforcement statement as stated in Section 6, Publicity, below. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent shall use the SEP Offset Amount only for the direct cost of implementing the Project, including supplies, materials, and equipment rentals, as listed in Subsection C. Minimum Expenditure, Estimated Cost Schedule, below. No portion of the SEP Offset Amount shall be spent on administrative costs, including but not limited to operating costs, reporting expenses, handling of expenses, project coordination, liability, or equipment breakdowns.

Respondent’s signature affixed to the attached Agreed Order certifies that Respondent has no prior commitment to perform this Project and that the SEP is being performed solely as part of the terms of settlement in this enforcement action.

B. Environmental Benefit

Low-hazard backflow assemblies are required to be tested upon installation; however, no other test requirement is needed for the life of the irrigation system. The Project will help protect the public drinking water supply from cross-connections or backflow of contaminants.

C. Minimum Expenditure

Respondent shall spend at least the SEP Offset Amount to complete the project described in Section 1, above, and comply with all other provisions of this SEP. Respondent understands that it may cost more than the SEP Offset Amount to complete the Project.

Estimated Cost Schedule

Item	Quantity	Cost	Units	Total
Backflow Assembly Test	60	\$30.00	Each	\$1800.00
Backflow Assembly	30	\$140.00	Each	\$4200.00
Backflow Assembly Enclosure	10	\$25.00	Each	\$250.00
Backflow Assembly Installation	30	\$200.00	Each	\$6000.00
City of Arlington Permit	30	\$75.00	Each	\$2250.00
Total				\$14,500.00

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent shall begin implementation of the SEP. Respondent shall have completed the SEP in its entirety within 365 days after the effective date of this Agreed Order.

3. Records and Reporting

A. Progress Report

Within 30 days after the effective date of this Agreed Order, Respondent shall submit a Notice of Commencement to the TCEQ describing actions performed to date to implement the Project. Within 90 days of the effective date of this Agreed Order, Respondent shall submit a report detailing the progress made and all actions completed on the Project during the previous 60-day period and setting forth a schedule for achieving completion of the Project within the 365-day timeframe set forth in Section 2, Performance Schedule, above. Thereafter, Respondent shall submit progress reports to the TCEQ in 90-day increments containing detailed information on all actions completed on the Project to date as set forth in the Reporting Schedule table below:

Days from Effective Order Date	Information Required
30	Notice of Commencement describing actions taken to begin project
90	Actions completed during previous 60-day period
180	Actions completed during previous 90-day period
270	Actions completed during previous 90-day period
365	Notice of SEP completion

B. Final Report

Within 365 days after the effective date of the Agreed Order, or within 60 days after completion of SEP, whichever is earlier, Respondent shall submit a Final Report to the TCEQ, which shall include the following:

1. Itemized list of expenditures and total cost of the Project;
2. Copies of invoices, paid receipts, cleared checks or payment records corresponding to the itemized list in paragraph 3.B.1., above;
3. Copies of proof of advertisement of the Low-Hazard Assembly event (the advertisement must include the statement that the SEP was performed as a result of a TCEQ enforcement action), if applicable;
4. A certified/notarized statement of quantifiable environmental benefit;
5. Detailed map showing specific locations of the Low-Hazard Assembly site(s);
6. Dated photographs of the Project; testing, repairing or replacement;
7. Copies of the permits for Low-Hazard Assembly users.
8. Any additional information Respondent believes will, or that is requested by TCEQ to demonstrate compliance with this Attachment A.;

C. Address

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

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

4. Additional Information and Access

Respondent shall provide additional information as requested by TCEQ staff, and shall allow access to all records related to the SEP Offset Amount. Respondent shall also allow representatives of the TCEQ access to the site of any work being financed in whole or in part by the SEP Offset Amount. This provision shall survive the termination of this Agreed Order.

5. Failure to Fully Perform

If Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 through 4 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount as set forth in the attached Agreed Order.

In the event the ED determines that Respondent failed to fully implement and complete the Project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for reimbursement of a SEP, 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

6. Publicity

Any public statements concerning this Project made by or on behalf of Respondent must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

7. Clean Texas Program

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

8. Other SEPs by TCEQ or Other Agencies

The SEP Offset Amount identified in this Attachment A and in the attached Agreed Order has not been, and shall not be, included as a SEP for 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 4-Feb-2013	Screening 14-Feb-2013	EPA Due
	PCW 14-Feb-2013		

RESPONDENT/FACILITY INFORMATION

Respondent	City of Arlington		
Reg. Ent. Ref. No.	RN104950134		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	46263	No. of Violations	1
Docket No.	2013-0373-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Lanae Foard
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$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 **100.0%** Enhancement **Subtotals 2, 3, & 7** **\$7,500**

Notes Enhancement recommended for one NOV with dissimilar violations, three orders without denial of liability, and repeat violator status.

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 **\$21**
 Approx. Cost of Compliance **\$38,801**
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$13,125**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$13,125**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$13,125**

DEFERRAL **0.0%** Reduction **Adjustment** **\$0**

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

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$13,125**

Screening Date 14-Feb-2013

Docket No. 2013-0373-WQ-E

PCW

Respondent City of Arlington

Policy Revision 3 (September 2011)

Case ID No. 46263

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104950134

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	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	3	75%
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) 77%

>> Repeat Violator (Subtotal 3)

Yes

Adjustment Percentage (Subtotal 3) 25%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement recommended for one NOV with dissimilar violations, three orders without denial of liability, and repeat violator status.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 102%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 100%

Screening Date 14-Feb-2013

Docket No. 2013-0373-WQ-E

PCW

Respondent City of Arlington

Policy Revision 3 (September 2011)

Case ID No. 46263

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN104950134

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(1)

Violation Description

Failed to prevent the unauthorized discharge of wastewater from the collection system into or adjacent to any water in the state. Specifically, a sewer line blockage resulted in the overflow of approximately 43,200 gallons of wastewater from a manhole near the intersection of Cooper Street and Nedderman Drive, into an unnamed creek which flows through Dough Russell Park and a beautification pond on the University of Texas at Arlington campus, resulting in a fish kill of approximately 2,614 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

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

daily	x
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$7,500

One daily event is recommended from the date of the discharge (December 3, 2012) to the date the discharge ceased and the sewer line was repaired (December 4, 2012).

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 achieved compliance on December 7, 2012.

Violation Subtotal \$5,625

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$21

Violation Final Penalty Total \$13,125

This violation Final Assessed Penalty (adjusted for limits) \$13,125

Economic Benefit Worksheet

Respondent City of Arlington
Case ID No. 46263
Req. Ent. Reference No. RN104950134
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	Overtime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$38,801	3-Dec-2012	7-Dec-2012	0.01	\$21	n/a	\$21
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost to contain the discharge, make repairs to the sewer line, collect and analyze samples from the affected area, 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

\$38,801

TOTAL

\$21

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.



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN600131791, RN104950134, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN600131791, City of Arlington **Classification:** SATISFACTORY **Rating:** 7.90

Regulated Entity: RN104950134, CITY OF ARLINGTON COLLECTION SYSTEM **Classification:** UNSATISFACTORY **Rating:** 125.00

Complexity Points: 4 **Repeat Violator:** YES

CH Group: 08 - Sewage Treatment Facilities

Location: 101 W ABRAM ST, ARLINGTON, TARRANT COUNTY, TX

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s):
UTILITIES REGISTRATION P0034 **STORMWATER PERMIT** TXR15VY76
STORMWATER PERMIT TXR15WE71

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

Date Compliance History Report Prepared: March 21, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: March 21, 2008 to March 21, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Lanae Foard **Phone:** (512) 239-2554

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:

- 1 Effective Date: 08/29/2008 ADMINORDER 2007-1776-WQ-E (Findings Order-Agreed Order Without Denial)
Classification: Major
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
Description: Failure to prevent an unauthorized discharge.
- 2 Effective Date: 06/20/2011 ADMINORDER 2010-1625-WQ-E (Findings Order-Agreed Order Without Denial)
Classification: Major
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
Description: Failure to prevent an unauthorized discharge of wastewater into or adjacent to water of the state.
- 3 Effective Date: 12/15/2012 ADMINORDER 2011-2258-WQ-E (Findings Order-Agreed Order Without Denial)
Classification: Major
Citation: TWC Chapter 26 26.121
Description: Failure to prevent an unauthorized discharge, release, or spill which resulted in a documented serious impact to the environment.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1	August 21, 2008	(700646)
Item 2	September 24, 2009	(777090)

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.

1 Date: 11/16/2012 (1036814)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 217, SubChapter C 217.63(b)
30 TAC Chapter 217, SubChapter C 217.63(c)
30 TAC Chapter 317 317.3(e)(5)
Description: Failure to provide adequate audio and visual alarms at the lift station(s).
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 217, SubChapter C 217.59(b)
Description: Failure to provide complete security at the Tiffany Park Lift Station.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 217, SubChapter C 217.60(d)
30 TAC Chapter 217, SubChapter C 217.60(d)(1)(A)
Description: Failure to comply with lift station design requirements.

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
RN104950134**

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

**AGREED ORDER
DOCKET NO. 2013-0373-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 wastewater collection system located at 101 West Abram Street, with an associated manhole located near the intersection of Cooper Street and Nedderman Drive in Arlington, Tarrant 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 December 3, 2012, TCEQ staff documented that on December 3, 2012, a sewer line blockage resulted in the overflow of approximately 43,200 gallons of wastewater from a manhole near the intersection of Cooper Street and Nedderman Drive into an unnamed creek which flows through Dough Russell Park and a beautification pond on the University of Texas at Arlington campus, resulting in a fish kill of approximately 2,614 fish.
4. The Respondent received notice of the violations on February 4, 2013.
5. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. On December 3, 2012, located and removed the sewer line blockage, ceased the discharge by pumping the wastewater back into the collection system, deployed two aerators into the pond, and began extracting the dead fish from the creek and pond;
 - b. By December 4, 2012, collected and returned to the collection system approximately 30,240 gallons of wastewater, completed the sewer line repairs, and ceased pumping;
 - c. On December 6, 2012, completed the removal and disposal of the dead fish and remediated the affected area by flushing with dechlorinated potable water; and
 - d. By December 7, 2012, confirmed that pollutant levels in the pond had been returned to levels protective of the environment.

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 collection system into or adjacent to any water in the state, in violation of TEX. WATER CODE § 26.121(a)(1).
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 One Hundred Twenty-Five Dollars (\$13,125) 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. Thirteen Thousand One Hundred Twenty-Five Dollars (\$13,125) 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 One Hundred Twenty-Five Dollars (\$13,125) 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. 2013-0373-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 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 One Hundred Twenty-Five Dollars (\$13,125) of the assessed administrative penalty shall be offset with the condition that Respondent implement the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The 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

Pam Dawkins
For the Executive Director

12/6/13
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.

Walter J. Piskur
Signature

8/29/13
Date

WALTER J. PISKUR
Name (Printed or typed)
Authorized Representative of
City of Arlington

DIRECTOR
Title

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.

Attachment A
Docket Number: 2013-0373-WQ-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Arlington
Penalty Amount:	Thirteen Thousand One Hundred Twenty-Five Dollars (\$13,125)
SEP Offset Amount:	Thirteen Thousand One Hundred Twenty-Five Dollars (\$13,125)
Type of SEP:	Custom
Project Name:	<i>Residential Backflow Protection Testing, Repair, or Replacement</i>
Location of SEP:	Tarrant County

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

1. Project Description

A. Project

Respondent shall provide backflow testing, repair, or replacement for low-hazard assemblies for residential users on irrigation systems. Respondent shall hire a contractor to test, repair, or replace low-hazard assemblies at no cost to the resident (the “Project”). Respondent agrees to obtain any and all required permit(s) prior to commencement of the project. Any advertisement, including publication, related to the SEP must include the enforcement statement as stated in Section 6, Publicity, below. The SEP will be performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent shall use the SEP Offset Amount only for the direct cost of implementing the Project, including supplies, materials, and equipment rentals, as listed in Subsection C. Minimum Expenditure, Estimated Cost Schedule, below. No portion of the SEP Offset Amount shall be spent on administrative costs, including but not limited to operating costs, reporting expenses, handling of expenses, project coordination, liability, or equipment breakdowns.

Respondent’s signature affixed to the attached Agreed Order certifies that Respondent has no prior commitment to perform this Project and that the SEP is being performed solely as part of the terms of settlement in this enforcement action.

B. Environmental Benefit

Low-hazard backflow assemblies are required to be tested upon installation; however, no other test requirement is needed for the life of the irrigation system. The Project will help protect the public drinking water supply from cross-connections or backflow of contaminants.

C. Minimum Expenditure

Respondent shall spend at least the SEP Offset Amount to complete the project described in Section 1, above, and comply with all other provisions of this SEP. Respondent understands that it may cost more than the SEP Offset Amount to complete the Project.

Estimated Cost Schedule

Item	Quantity	Cost	Units	Total
Backflow Assembly Test	60	\$30.00	Each	\$1800.00
Backflow Assembly	30	\$140.00	Each	\$4200.00
Backflow Assembly Enclosure	10	\$25.00	Each	\$250.00
Backflow Assembly Installation	30	\$200.00	Each	\$6000.00
City of Arlington Permit	30	\$75.00	Each	\$2250.00
Total				\$14,500.00

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, Respondent shall begin implementation of the SEP. Respondent shall have completed the SEP in its entirety within 365 days after the effective date of this Agreed Order.

3. Records and Reporting

A. Progress Report

Within 30 days after the effective date of this Agreed Order, Respondent shall submit a Notice of Commencement to the TCEQ describing actions performed to date to implement the Project. Within 90 days of the effective date of this Agreed Order, Respondent shall submit a report detailing the progress made and all actions completed on the Project during the previous 60-day period and setting forth a schedule for achieving completion of the Project within the 365-day timeframe set forth in Section 2, Performance Schedule, above. Thereafter, Respondent shall submit progress reports to the TCEQ in 90-day increments containing detailed information on all actions completed on the Project to date as set forth in the Reporting Schedule table below:

Days from Effective Order Date	Information Required
30	Notice of Commencement describing actions taken to begin project
90	Actions completed during previous 60-day period
180	Actions completed during previous 90-day period
270	Actions completed during previous 90-day period
365	Notice of SEP completion

B. Final Report

Within 365 days after the effective date of the Agreed Order, or within 60 days after completion of SEP, whichever is earlier, Respondent shall submit a Final Report to the TCEQ, which shall include the following:

1. Itemized list of expenditures and total cost of the Project;
2. Copies of invoices, paid receipts, cleared checks or payment records corresponding to the itemized list in paragraph 3.B.1., above;
3. Copies of proof of advertisement of the Low-Hazard Assembly event (the advertisement must include the statement that the SEP was performed as a result of a TCEQ enforcement action), if applicable;
4. A certified/notarized statement of quantifiable environmental benefit;
5. Detailed map showing specific locations of the Low-Hazard Assembly site(s);
6. Dated photographs of the Project; testing, repairing or replacement;
7. Copies of the permits for Low-Hazard Assembly users.
8. Any additional information Respondent believes will, or that is requested by TCEQ to demonstrate compliance with this Attachment A.;

C. Address

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

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

4. Additional Information and Access

Respondent shall provide additional information as requested by TCEQ staff, and shall allow access to all records related to the SEP Offset Amount. Respondent shall also allow representatives of the TCEQ access to the site of any work being financed in whole or in part by the SEP Offset Amount. This provision shall survive the termination of this Agreed Order.

5. Failure to Fully Perform

If Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 through 4 above, the Executive Director ("ED") may require immediate payment of all or part of the SEP Offset Amount as set forth in the attached Agreed Order.

In the event the ED determines that Respondent failed to fully implement and complete the Project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for reimbursement of a SEP, shall make the check payable to "Texas Commission on Environmental Quality," and shall mail it to:

City of Arlington
Attachment A

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

6. Publicity

Any public statements concerning this Project made by or on behalf of Respondent must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by the TCEQ**. Such statements include advertising, public relations, and press releases.

7. Clean Texas Program

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

8. Other SEPs by TCEQ or Other Agencies

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