

**Executive Summary – Enforcement Matter – Case No. 43929**

**City of Plano**

**RN103099156**

**Docket No. 2012-0760-WQ-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

**Media:**

WQ

**Small Business:**

No

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

City of Plano wastewater collection system, located at or adjacent to 1100 Campbell Road and 3733 East 18th Street, Plano, Collin County

**Type of Operation:**

Wastewater collection system with collection lines and associated manholes

**Other Significant Matters:**

Additional Pending Enforcement Actions: Yes, Docket No. 2013-1868-WQ-E

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** March 14, 2014

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$19,750

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

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

**Total Paid to General Revenue:** \$19,750

**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 - Poor

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2011

**Executive Summary – Enforcement Matter – Case No. 43929  
City of Plano  
RN103099156  
Docket No. 2012-0760-WQ-E**

***Investigation Information***

**Complaint Date(s):** N/A  
**Complaint Information:** N/A  
**Date(s) of Investigation:** February 15, 2012  
**Date(s) of NOE(s):** March 1, 2012

***Violation Information***

1. Failed to report unauthorized discharges to the TCEQ within 24 hours after its occurrence [TEX. WATER CODE § 26.039(b)].
2. Failed to prevent the unauthorized discharges of raw wastewater from the System [TEX. WATER CODE § 26.121(a)(1)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Respondent has implemented the following corrective measures:

- a. By January 26, 2012, removed debris from areas of the unauthorized discharges; and
- b. On March 8, 2012, conducted training which included providing copies of the revised standard operating procedure and reviewing the requirement to notify the TCEQ of any unauthorized discharges within 24 hours.

**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 30 days, complete an assessment of the Prairie Creek and Lower White Rock Creek Basins contributing to the unauthorized discharge at 1100 Campbell Road, including smoke-testing and/or closed circuit television inspection, and a review of flow monitoring data to determine the primary cause of unauthorized discharges from the collection line or manhole at that location;
- b. Within 60 days, submit a report which includes the results of the assessment and a plan and schedule for replacement, rehabilitation, and maintenance activities to be implemented and completed within 1,826 days after the effective date of this Agreed Order, based upon the results of the assessment to prevent additional unauthorized discharges from the collection line or manhole at 1100 Campbell Road;

**Executive Summary – Enforcement Matter – Case No. 43929**

**City of Plano**

**RN103099156**

**Docket No. 2012-0760-WQ-E**

c. Within 90 days, complete an assessment of the Rowlett Creek Basin contributing to the unauthorized discharge at 3733 East 18th Street, including smoke-testing and/or closed circuit television inspection, and a review of flow monitoring data to determine the primary cause of unauthorized discharges from the collection line or manhole at that location;

d. Within 120 days, submit a report which includes the results of the assessment and a plan and schedule for replacement, rehabilitation, and maintenance activities to be implemented and completed within 1,885 days after the effective date of this Agreed Order, based upon the results of the assessment to prevent additional unauthorized discharges from the collection line or manhole between the 3700 and 3800 block on East 18th Street;

e. Within 150 days, and on an annual basis thereafter, submit a report that contains information regarding the progress of the corrective actions. The reports shall include specific corrective actions that were completed during the reporting period, as well as any proposed corrective actions that were delayed or not completed, including explanations why the actions were delayed or not completed; and

f. Within 2,008 days, submit a final report which includes a summary of all corrective actions that have been completed and a description of the overall improvement the corrective actions had on the System.

***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

**TCEQ SEP Coordinator:** N/A

**Respondent:** Bruce Glassock, City Manager, City of Plano, P.O. Box 860358, Plano, Texas 75086-0358

The Honorable Harry LaRosiliere, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086-0358

**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>	12-Mar-2012	<b>Screening</b>	26-Mar-2012	<b>EPA Due</b>	
	<b>PCW</b>	5-Apr-2012				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	City of Plano				
<b>Reg. Ent. Ref. No.</b>	RN103099156				
<b>Facility/Site Region</b>	4-Dallas/Fort Worth	<b>Major/Minor Source</b>	Minor		

## CASE INFORMATION

<b>Enf./Case ID No.</b>	43929	<b>No. of Violations</b>	2
<b>Docket No.</b>	2012-0760-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>	Lanae Foard
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$10,000**

### 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** **\$10,000**

Notes: Enhancement for two NOVs with same/similar violations, one NOV with dissimilar violations, three orders without denial of liability, and repeat violator status.

**Culpability** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** **\$250**

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

Total EB Amounts **\$8,555**  
 Approx. Cost of Compliance **\$100,300**  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$19,750**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount** **\$19,750**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$19,750**

**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** **\$19,750**

Screening Date 26-Mar-2012

Docket No. 2012-0760-WQ-E

PCW

Respondent City of Plano

Policy Revision 3 (September 2011)

Case ID No. 43929

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103099156

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> )	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	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)** 87%

#### >> Repeat Violator (Subtotal 3)

Yes

**Adjustment Percentage (Subtotal 3)** 25%

#### >> Compliance History Person Classification (Subtotal 7)

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

#### >> Compliance History Summary

Compliance History Notes

Enhancement for two NOVs with same/similar violations, one NOV with dissimilar violations, three orders without denial of liability, and repeat violator status.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 112%

#### >> Final Compliance History Adjustment

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

Screening Date 26-Mar-2012

Docket No. 2012-0760-WQ-E

PCW

Respondent City of Plano

Policy Revision 3 (September 2011)

Case ID No. 43929

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103099156

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number 1

Rule Cite(s) Tex. Water Code § 26.039(b)

Violation Description Failed to report unauthorized discharges to the TCEQ within 24 hours after their occurrence. Specifically, two unauthorized discharges that occurred on January 25, 2012 were not reported to the TCEQ Dallas/Fort Worth Regional Office until February 8, 2012.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR Harm Matrix table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (0.0%).

>> Programmatic Matrix

Programmatic Matrix table with columns: Falsification, Major, Moderate, Minor, and Percent (5.0%). Matrix Notes: 100% of the requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 2 Number of violation days 13

Frequency selection table with options: daily, weekly, monthly, quarterly, semiannual, annual, single event. 'single event' is marked with an 'x'.

Violation Base Penalty \$2,500

Two single events (one for each unauthorized discharge) are recommended.

Good Faith Efforts to Comply

Good Faith Efforts table with columns: Reduction (10.0%), Before NOV, NOV to EDPRP/Settlement Offer. Rows: Extraordinary, Ordinary, N/A.

\$250

Notes: The Respondent conducted training on March 8, 2012 to review standard operating procedures for unauthorized discharges, including reporting.

Violation Subtotal \$2,250

Economic Benefit (EB) for this violation

Estimated EB Amount \$2

Statutory Limit Test

Violation Final Penalty Total \$4,750

This violation Final Assessed Penalty (adjusted for limits) \$4,750

## Economic Benefit Worksheet

**Respondent** City of Plano  
**Case ID No.** 43929  
**Reg. Ent. Reference No.** RN103099156  
**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
<small>No commas or \$</small>							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$250	26-Jan-2012	8-Mar-2012	0.12	\$1	n/a	\$1
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$50	26-Jan-2012	8-Feb-2012	0.04	\$0	n/a	\$0

#### Notes for DELAYED costs

Estimated cost for the completion and submittal of two noncompliance notifications to TCEQ and the cost to update the Facility's operational guidance and conduct training to ensure correct reporting. Date required is the due date of the notices and final dates are the date the notices were received by TCEQ (February 8, 2012) and the date training was conducted (March 8, 2012).

### 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

\$300

**TOTAL**

\$2

Screening Date 26-Mar-2012

Docket No. 2012-0760-WQ-E

PCW

Respondent City of Plano

Policy Revision 3 (September 2011)

Case ID No. 43929

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103099156

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Violation Number 2

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

Violation Description Failed to prevent unauthorized discharges of raw wastewater from the collection system. Specifically, an unauthorized discharge of 13,200 gallons occurred from the collection line located at 1100 Campbell Road in Plano on January 25, 2012 beginning at 7:05 a.m. and ending at 12:24 p.m. on January 26, 2012. Another unauthorized discharge of 820 gallons occurred from the collection line located at 3733 East 18th Street in Plano, on January 25, 2012 beginning at 8:51 a.m. and ending at 5:18 p.m. on January 25, 2012.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		x		15.0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

Matrix Notes Human health or the environment has been exposed to significant amounts of pollutants as a result of these violations.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 2 Number of violation days 2

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$7,500

Two monthly events (one for each unauthorized discharge) are recommended from the date the unauthorized discharges began (January 25, 2012) to the date they both ceased and debris was cleaned up (January 26, 2012).

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$7,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$8,553

Violation Final Penalty Total \$15,000

This violation Final Assessed Penalty (adjusted for limits) \$15,000

## Economic Benefit Worksheet

**Respondent** City of Plano  
**Case ID No.** 43929  
**Reg. Ent. Reference No.** RN103099156  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$100,000	25-Jan-2012	15-Apr-2013	1.22	\$407	\$8,146	\$8,553
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				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 remove debris from areas of the unauthorized discharges and to conduct an assessment to determine the major factors contributing to the unauthorized discharges in order to develop a long-term resolution. Date required is the date the unauthorized discharges began and final date is when compliance is expected to be achieved.

### 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

\$100,000

TOTAL

\$8,553

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600352488 City of Plano Classification: AVERAGE Rating: 4.08

Regulated Entity: RN103099156 CITY OF PLANO Classification: POOR Site Rating: 87.60

ID Number(s): UTILITIES REGISTRATION 20070

Location: At or adjacent to 1100 Campbell Road and 3733 East 18th Street, Collin County

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: April 09, 2012

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 09, 2007 to April 09, 2012

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

Name: Merrilee Hupp Phone: (512) 239 - 4490

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? YES
2. Has there been a (known) change in ownership/operator of the site during the compliance period? NO
3. If YES, who is the current owner/operator? N/A
4. If YES, who was/were the prior owner(s)/operator(s)? N/A
5. If YES, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: YES

## 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: 05/22/2008 ADMINORDER 2007-1644-WQ-E  
Classification: Major  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)  
Description: Failure to prevent a discharge into or adjacent to any water in the state.

Effective Date: 07/21/2008 ADMINORDER 2007-0889-WQ-E  
Classification: Major  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
Description: unauthorized discharge of four to five million gallons of raw wastewater which began on January 13, 2007 from a collection system line into waters in the state due to a line failure. Pittman and White Rock creeks were impacted. Approximately 12 dead fish were documented in a Pittman Creek pond.

Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.039(b)  
30 TAC Chapter 319, SubChapter C 319.302(c)  
30 TAC Chapter 319, SubChapter C 319.302(d)  
Description: notification of a spill was not provided to local government officials, the news media and the TCEQ regional office within 24 hours after becoming aware of the discharge which began on January 13, 2007. The TCEQ regional office was notified orally on January 15, 2007 and local government officials and the news media were notified on January 18, 2007.

Effective Date: 11/06/2008 ADMINORDER 2007-1337-WQ-E  
Classification: Major  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)  
Description: failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state. Specifically, on May 20, 2007, approximately 216,000 gallons of wastewater discharged from a 24-inch sewer main located at 7700 Circleview Court due to a line blocked with carpet

- 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.)

		(568620)
1	07/27/2007	
2	09/28/2007	(573455)
3	11/30/2007	(610291)
4	08/22/2008	(700840)
5	01/30/2009	(725456)
6	02/08/2010	(791265)
7	05/10/2010	(802082)
8	07/15/2010	(828134)
9	11/01/2011	(959100)
10	12/06/2011	(970519)
11	02/24/2012	(987770)
12	03/07/2012	(987957)

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

Date: 02/08/2010 (791265)

Self Report? NO Classification: Moderate

Citation: TWC Chapter 26 26.121

Description: Failure to prevent unauthorized discharges from the collection system.

Self Report? NO Classification: Major

Citation: TWC Chapter 26 26.039

Description: Failure to comply with the unauthorized discharge reporting requirements.

Self Report? NO Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.039(e)

30 TAC Chapter 319, SubChapter C 319.302(b)

30 TAC Chapter 319, SubChapter C 319.303

Description: Failure to submit public and media notification when it is required.

Date: 05/13/2010 (790399) CN600352488

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 335, SubChapter R 335.504

Description: Failure to conduct a hazardous waste determination on the used FireFly water meters prior to disposal.

Date: 10/31/2011 (959100)

Self Report? NO Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)

2D TWC Chapter 26, SubChapter A 26.121(a)(1)

2D TWC Chapter 26, SubChapter A 26.121(a)(2)

2D TWC Chapter 26, SubChapter A 26.121(a)(3)

Description: Failure to prevent unauthorized discharge of untreated wastewater.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 217, SubChapter C 217.63(b)

30 TAC Chapter 217, SubChapter C 217.63(c)

Description: Failure to provide audiovisual alarms at the Mapleshade and Billingly lift stations.

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 PLANO  
RN103099156

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2012-0760-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 Plano ("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 with collection lines and associated manholes located at or adjacent to 1100 Campbell Road and 3733 East 18<sup>th</sup> Street in Plano, Collin 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 a record review on February 15, 2012, TCEQ staff documented that two unauthorized discharges that occurred on January 25, 2012 were not reported to the TCEQ Dallas/Fort Worth Regional Office until February 8, 2012.
4. During a record review on February 15, 2012, TCEQ staff documented two unauthorized discharges of raw wastewater from the System. Specifically, an unauthorized discharge of 13,200 gallons occurred from the collection line located at 1100 Campbell Road in Plano on January 25, 2012 beginning at 7:05 a.m and ending at 12:24 p.m. on January 26, 2012. Another unauthorized discharge of 820 gallons occurred from the collection line located at 3733 East 18th Street in Plano, on January 25, 2012 beginning at 8:51 a.m. and ending at 5:18 p.m. on January 25, 2012.
5. The Respondent received notice of the violations on March 5, 2012.
6. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the System:
  - a. By January 26, 2012, removed debris from areas of the unauthorized discharges; and
  - b. On March 8, 2012, conducted training which included providing copies of the revised standard operating procedure and reviewing the requirement to notify the TCEQ of any unauthorized discharges within 24 hours.

## 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 report unauthorized discharges to the TCEQ within 24 hours after its occurrence, in violation of TEX. WATER CODE § 26.039(b).
3. As evidenced by Findings of Fact No. 4, the Respondent failed to prevent the unauthorized discharges of raw wastewater from the System, in violation of TEX. WATER CODE § 26.121(a)(1).
4. 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.

5. An administrative penalty in the amount of Nineteen Thousand Seven Hundred Fifty Dollars (\$19,750) 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 Nineteen Thousand Seven Hundred Fifty Dollar (\$19,750) 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 Nineteen Thousand Seven Hundred Fifty Dollars (\$19,750) as set forth in Section II, Paragraph 5 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 Plano, Docket No. 2012-0760-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 Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order, complete an assessment of the Prairie Creek and Lower White Rock Creek Basins contributing to the unauthorized discharge at 1100 Campbell Road, including smoke-testing and/or closed circuit television inspection, and a review of flow monitoring data to determine the primary cause of unauthorized discharges from the collection line or manhole at that location;
  - b. Within 60 days after the effective date of this Agreed Order, submit a report which includes the results of the assessment and a plan and schedule for replacement, rehabilitation, and maintenance activities to be implemented and completed within 1,826 days after the effective date of this Agreed Order, based upon the results of the assessment as described in Ordering Provision No. 2.a, to prevent additional unauthorized discharges from the collection line or manhole at 1100 Campbell Road;
  - c. Within 90 days after the effective date of this Agreed Order, complete an assessment of the Rowlett Creek Basin contributing to the unauthorized

discharge at 3733 East 18th Street, including smoke-testing and/or closed circuit television inspection, and a review of flow monitoring data to determine the primary cause of unauthorized discharges from the collection line or manhole at that location;

- d. Within 120 days after the effective date of this Agreed Order, submit a report which includes the results of the assessment and a plan and schedule for replacement, rehabilitation, and maintenance activities to be implemented and completed within 1,885 days after the effective date of this Agreed Order, based upon the results of the assessment as described in Ordering Provision No. 2.c, to prevent additional unauthorized discharges from the collection line or manhole between the 3700 and 3800 block on East 18<sup>th</sup> Street;
- e. Within 150 days after the effective date of this Agreement, and on an annual basis thereafter, submit a report that contains information regarding the progress of the corrective actions contained in Ordering Provision Nos. 2.a through 2.d. The reports shall include specific corrective actions that were completed during the reporting period, as well as any proposed corrective actions that were delayed or not completed, including explanations why the actions were delayed or not completed;
- f. Within 2,008 days after the effective date of this Agreed Order, submit a final report which includes a summary of all corrective actions that have been completed as described within the report required by Ordering Provision Nos. 2.b and 2.d and a description of the overall improvement the corrective actions had on the System;
- g. The reports required in Ordering Provision Nos. 2.b, 2.d, 2.e., and 2.f shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Water Section, Manager  
Dallas/Fort Worth Regional Office  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

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 System 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

Pamela Dawber J  
For the Executive Director

5/2/14

\_\_\_\_\_  
Date

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

Bruce Glasscock  
Signature

05/23/14  
Date

Bruce Glasscock  
Name (Printed or typed)  
Authorized Representative of  
City of Plano

City Manager  
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.