

Executive Summary – Enforcement Matter – Case No. 49526
City of Wilmer
RN101403483
Docket No. 2014-1572-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 Wilmer, located adjacent to the 700 block of Dewberry Street, Wilmer, Dallas County

Type of Operation:

Wastewater collection system

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: May 15, 2015

Comments Received: No

Penalty Information

Total Penalty Assessed: \$6,564

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

Supplemental Environmental Project ("SEP") Conditional Offset: \$6,564

Name of SEP: Meter Replacement Project (Custom)

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Satisfactory

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

**Executive Summary – Enforcement Matter – Case No. 49526
City of Wilmer
RN101403483
Docket No. 2014-1572-WQ-E**

Investigation Information

Complaint Date(s): September 3, 2014

Complaint Information: Complainant is concerned over sewer backing up into resident's yard

Date(s) of Investigation: September 4 through September 9, 2014

Date(s) of NOE(s): October 6, 2014

Violation Information

1. Failed to prevent an unauthorized discharge of wastewater from the collection system into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)(1)].
2. Failed to report unauthorized discharges to the TCEQ within 24 hours after their occurrence [TEX. WATER CODE § 26.039(b)].
3. Failed to employ at least one licensed operator holding the appropriate level wastewater collection license class or higher [30 TEX. ADMIN. CODE §§ 30.331(b) and 30.350(n)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent has implemented the following corrective measures:

- a. By September 5, 2014, removed the blockage from the collection line and remediated the affected areas;
- b. By September 9, 2014, updated operational guidance to ensure that unauthorized discharges are reported to the TCEQ within 24 hours; and
- c. By September 29, 2014, employed a licensed operator holding the appropriate level wastewater collection license class or higher.

Technical Requirements:

The Order will require the Respondent to implement and complete a 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

Executive Summary – Enforcement Matter – Case No. 49526

City of Wilmer

RN101403483

Docket No. 2014-1572-WQ-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Jill Russell, Enforcement Division, Enforcement Team 3, MC 169, (512) 239-4564; Melissa Cordell, Enforcement Division, MC 219, (512) 239-2483

TCEQ SEP Coordinator: Meaghan Bailey, SEP Coordinator, Litigation Division, MC 175, (512) 239-0205

Respondent: The Honorable Casey Burgess, Mayor, City of Wilmer, 128 North Dallas Avenue, Wilmer, Texas 75172

Respondent's Attorney: N/A

Attachment A
Docket Number: 2014-1572-WQ-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Wilmer
Penalty Amount:	Six Thousand Five Hundred Sixty-Four Dollars (\$6,564)
SEP Offset Amount:	Six Thousand Five Hundred Sixty-Four Dollars (\$6,564)
Type of SEP:	Custom
Project Name:	<i>Meter Replacement Project</i>
Location of SEP:	Dallas County; Trinity River Basin

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 purchase and replace approximately 100 aged water meters in older neighborhoods where fixed-income elderly and lower-income residents live. The older meters have developed leaks which may cause contamination to the drinking water at the meter site(s). Also, the aged, leaking water meters causes standing water to stagnate in yards and attract mosquitoes. Respondent’s employees will provide the labor to replace the meters at no cost toward the SEP; however, some meters may need to be contracted out due to the type of repair needed prior to the meter installation (the “Project”). Any advertisement, including publication(s) related to the SEP, must include the enforcement statement as stated in Section 6, Publicity. 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. 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

The SEP will help reduce water loss and potential contamination due to leaks from the aged water meters. The Project will also prevent the formation of stagnant pools of water which are breeding grounds for mosquitoes.

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
¾" Master Meter	100	\$68.78	Each	\$6,878.00
Total				\$6,878.00

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

Days from Effective Order Date	Information Required
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. A certified/notarized statement of quantifiable environmental benefit;
4. Verification of low-income residents receiving meters;
5. Detailed map showing specific locations of the replaced meter sites;
6. Dated photographs of the purchased materials and supplies; before and after work being performed during the installation process; and of the completed Project; and
7. 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. Recognition

Respondent may not seek recognition for this project 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 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	13-Oct-2014	Screening	14-Oct-2014	EPA Due	
	PCW	29-Dec-2014				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Wilmer
Reg. Ent. Ref. No.	RN101403483
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	49526	No. of Violations	3
Docket No.	2014-1572-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Remington Burkland
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$6,250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1	Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.	
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Compliance History	30.0% Enhancement	Subtotals 2, 3, & 7	\$1,875
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Notes: Enhancement for two NOVs with same/similar violations and one agreed order with denial.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$1,561
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$186
 Estimated Cost of Compliance: \$1,436
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$6,564
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$6,564
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$6,564
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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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	\$6,564
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Screening Date 14-Oct-2014

Docket No. 2014-1572-WQ-E

PCW

Respondent City of Wilmer

Policy Revision 4 (April 2014)

Case ID No. 49526

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101403483

Media [Statute] Water Quality

Enf. Coordinator Remington Burklund

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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%

Please Enter Yes or No

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

Adjustment Percentage (Subtotal 2) 30%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for two NOVs with same/similar violations and one agreed order with denial.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 30%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 30%

Screening Date 14-Oct-2014

Docket No. 2014-1572-WQ-E

PCW

Respondent City of Wilmer

Policy Revision 4 (April 2014)

Case ID No. 49526

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101403483

Media [Statute] Water Quality

Enf. Coordinator Remington Burkland

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(1)

Violation Description

Failed to prevent an unauthorized discharge of wastewater from the collection system into or adjacent to water in the state. Specifically, during the investigation, it was documented that an overflow of untreated wastewater was discharged and contained within the front yard of a residential property immediately adjacent to the 700 block of Dewberry Street in Wilmer, Texas, between September 3, 2014 and September 5, 2014. The discharge was due to collection line blockage.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

2 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,250

One quarterly event is recommended, calculated from the date the discharge occurred (September 3, 2014) to the date of compliance (September 5, 2014).

Good Faith Efforts to Comply

25.0%

Reduction

\$312

Before NOE/NOV NOE/NOV to EDP RP/Settlement Offer

Extraordinary	
Ordinary	x
N/A	(mark with x)

Notes The Respondent returned to compliance on September 5, 2014.

Violation Subtotal \$938

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,313

This violation Final Assessed Penalty (adjusted for limits) \$1,313

Economic Benefit Worksheet

Respondent City of Wilmer
Case ID No. 49526
Reg. Ent. Reference No. RN101403483
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	3-Sep-2014	5-Sep-2014	0.01	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove the blockage from the collection line and remediate the affected areas. Date required is the date of 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

\$1,000

TOTAL

\$0

Screening Date 14-Oct-2014

Docket No. 2014-1572-WQ-E

PCW

Respondent City of Wilmer

Policy Revision 4 (April 2014)

Case ID No. 49526

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101403483

Media [Statute] Water Quality

Enf. Coordinator Remington Burkland

Violation Number 2

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, as documented during an investigation conducted on September 4, 2014. Specifically, an unauthorized discharge of wastewater that occurred on September 3, 2014, was not reported to the TCEQ Dallas/Fort Worth Regional Office until September 9, 2014.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

5 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,250

One single event is recommended.

Good Faith Efforts to Comply

25.0%

Reduction \$312

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

Notes The Respondent returned to compliance on September 9, 2014.

Violation Subtotal \$938

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,313

This violation Final Assessed Penalty (adjusted for limits) \$1,313

Economic Benefit Worksheet

Respondent City of Wilmer
Case ID No. 49526
Reg. Ent. Reference No. RN101403483
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				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$250	4-Sep-2014	9-Sep-2014	0.01	\$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 update operational guidance to ensure that unauthorized discharges are reported to the TCEQ within 24 hours, calculated from the date the notification was due to 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

\$250

TOTAL

\$0

Screening Date 14-Oct-2014

Docket No. 2014-1572-WQ-E

PCW

Respondent City of Wilmer

Policy Revision 4 (April 2014)

Case ID No. 49526

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101403483

Media [Statute] Water Quality

Enf. Coordinator Remington Burkland

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 30.331(b) and 30.350(n)

Violation Description Failed to employ at least one licensed operator holding the appropriate level wastewater collection license class or higher, as documented during an investigation conducted on September 4, 2014.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

25 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$3,750

One monthly event is recommended, calculated from the investigation date (September 4, 2014) to the date of compliance (September 29, 2014).

Good Faith Efforts to Comply

25.0%

Reduction \$937

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary	
Ordinary	x
N/A	(mark with x)

Notes The Resopndent returned to compliance on September 29, 2014.

Violation Subtotal \$2,813

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$186

Violation Final Penalty Total \$3,938

This violation Final Assessed Penalty (adjusted for limits) \$3,938

Economic Benefit Worksheet

Respondent City of Wilmer
Case ID No. 49526
Reg. Ent. Reference No. RN101403483
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				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

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)	\$186	4-Sep-2014	29-Sep-2014	0.00	\$0	\$186	\$186

Notes for AVOIDED costs

Estimated avoided cost to license an employee as an operator holding the appropriate level wastewater collection license class or higher. The date required is the investigation date and the final date is the date of compliance.

Approx. Cost of Compliance

\$186

TOTAL

\$186

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 CN600738256, RN101403483, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN600738256, City of Wilmer **Classification:** SATISFACTORY **Rating:** 10.00

Regulated Entity: RN101403483, CITY OF WILMER **Classification:** SATISFACTORY **Rating:** 10.00

Complexity Points: 4 **Repeat Violator:** NO

CH Group: 14 - Other

Location: Adjacent to the 700 block of Dewberry Street in Wilmer, Dallas County, Texas.

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s):
UTILITIES REGISTRATION 20040

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: December 29, 2014

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: December 29, 2009 to December 29, 2014

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

Name: Remington Burklund

Phone: (512) 239-2611

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: 11/15/2010 ADMINORDER 2010-0549-WQ-E (1660 Order-Agreed Order With Denial)
Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
Description: Failed to prevent the unauthorized discharge of wastewater into or adjacent to water in the state. Specifically, a review of the Respondent's records indicated that on January 30, 2010, fallen clay lines caused a blockage in the main line, which resulted in an overflow of approximately 5,000 gallons of wastewater from a manhole located west of Kissel Street and south of Anderson Street, into Cottonwood Creek.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF WILMER
RN101403483

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2014-1572-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 Wilmer ("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 an associated collection line and residential cleanout located adjacent to the 700 block of Dewberry Street in Wilmer, Dallas County, Texas (the "Facility").

2. The Respondent has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation conducted on September 4 through September 9, 2014, TCEQ staff documented that an overflow of untreated wastewater was discharged and contained within the front yard of a residential property immediately adjacent to the 700 block of Dewberry Street in Wilmer, Texas, between September 3, 2014 and September 5, 2014. The discharge was due to collection line blockage.
4. During an investigation conducted on September 4 through September 9, 2014, TCEQ staff documented that an unauthorized discharge of wastewater that occurred on September 3, 2014, was not reported to the TCEQ Dallas/Fort Worth Regional Office until September 9, 2014.
5. During an investigation conducted on September 4 through September 9, 2014, TCEQ staff documented that the Respondent did not employ at least one licensed operator holding the appropriate level wastewater collection license class or higher.
6. The Respondent received notice of the violations on October 7, 2014.
7. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. By September 5, 2014, removed the blockage from the collection line and remediated the affected areas;
 - b. By September 9, 2014, updated operational guidance to ensure that unauthorized discharges are reported to the TCEQ within 24 hours; and
 - c. By September 29, 2014, employed a licensed operator holding the appropriate level wastewater collection license class or higher.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to prevent an unauthorized discharge of wastewater from the collection system into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1).
3. As evidenced by Findings of Fact No. 4, the Respondent failed to report unauthorized discharges to the TCEQ within 24 hours after their occurrence, in violation of TEX. WATER CODE § 26.039(b).

4. As evidenced by Findings of Fact No. 5, the Respondent failed to employ at least one licensed operator holding the appropriate level wastewater collection license class or higher, in violation of 30 TEX. ADMIN. CODE §§ 30.331(b) and 30.350(n).
5. 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.
6. An administrative penalty in the amount of Six Thousand Five Hundred Sixty-Four Dollars (\$6,564) 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. Six Thousand Five Hundred Sixty-Four Dollars (\$6,564) 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 Six Thousand Five Hundred Sixty-Four Dollars (\$6,564) as set forth in Section II, Paragraph 6 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 Wilmer, Docket No. 2014-1572-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 6 above, Six Thousand Five Hundred Sixty-Four Dollars (\$6,564) of the assessed administrative penalty shall be offset with the condition that the SEP defined in Attachment A, incorporated herein by reference, is implemented by the Respondent. The Respondent's obligation to pay the conditionally offset portion of the assessed administrative penalty 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 Maurie D
For the Executive Director

3/10/16
Date

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

Casey Burgess
Signature

6/30/15
Date

Casey Burgess
Name (Printed or typed)
Authorized Representative of
City of Wilmer

Mayor
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: 2014-1572-WQ-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Wilmer
Penalty Amount:	Six Thousand Five Hundred Sixty-Four Dollars (\$6,564)
SEP Offset Amount:	Six Thousand Five Hundred Sixty-Four Dollars (\$6,564)
Type of SEP:	Custom
Project Name:	<i>Meter Replacement Project</i>
Location of SEP:	Dallas County; Trinity River Basin

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 purchase and replace approximately 100 aged water meters in older neighborhoods where fixed-income elderly and lower-income residents live. The older meters have developed leaks which may cause contamination to the drinking water at the meter site(s). Also, the aged, leaking water meters causes standing water to stagnate in yards and attract mosquitoes. Respondent’s employees will provide the labor to replace the meters at no cost toward the SEP; however, some meters may need to be contracted out due to the type of repair needed prior to the meter installation (the “Project”). Any advertisement, including publication(s) related to the SEP, must include the enforcement statement as stated in Section 6, Publicity. 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. 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

The SEP will help reduce water loss and potential contamination due to leaks from the aged water meters. The Project will also prevent the formation of stagnant pools of water which are breeding grounds for mosquitoes.

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
¾" Master Meter	100	\$68.78	Each	\$6,878.00
Total				\$6,878.00

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

Days from Effective Order Date	Information Required
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. A certified/notarized statement of quantifiable environmental benefit;
4. Verification of low-income residents receiving meters;
5. Detailed map showing specific locations of the replaced meter sites;
6. Dated photographs of the purchased materials and supplies; before and after work being performed during the installation process; and of the completed Project; and
7. 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. Recognition

Respondent may not seek recognition for this project 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.