# Executive Summary – Enforcement Matter – Case No. 51227
# City of Plano
# RN103099156
# Docket No. 2015-1349-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 Plano PWS, with an associated water main located at 6100 Mallard Drive and a fire hydrant located at 2260 State Highway 121, Plano, Collin County
**Type of Operation:**
Public water supply with an associated water main and fire hydrant
**Other Significant Matters:**
Additional Pending Enforcement Actions: No
Past-Due Penalties: No
Other: N/A
Interested Third-Parties: None
**Texas Register Publication Date:** December 25, 2015
**Comments Received:** No

## *Penalty Information*

**Total Penalty Assessed:** $20,625
**Amount Deferred for Expedited Settlement:** $0
**Amount Deferred for Financial Inability to Pay:** $0
**Total Paid to General Revenue:** $20,625
**Total Due to General Revenue:** $0
Payment Plan: N/A
**Supplemental Environmental Project ("SEP") Conditional Offset:** $0
Name of SEP: N/A
**Compliance History Classifications:**
Person/CN - Satisfactory
Site/RN - Unsatisfactory
**Major Source:** No
**Statutory Limit Adjustment:** N/A
**Applicable Penalty Policy:** April 2014

**Executive Summary – Enforcement Matter – Case No. 51227**
**City of Plano**
**RN103099156**
**Docket No. 2015-1349-WQ-E**

## *Investigation Information*

**Complaint Date(s):** N/A
**Complaint Information**: N/A
**Date(s) of Investigation:** June 15 and 23, 2015
**Date(s) of NOE(s):** August 14, 2015

## *Violation Information*

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

2. Failed to submit a noncompliance notification to the TCEQ Dallas/Fort Worth Regional Office within 24 hours after becoming aware of the unauthorized discharge that occurred on June 14, 2015 [TEX. WATER CODE § 26.039(b)].

## *Corrective Actions/Technical Requirements*

**Corrective Action(s) Completed:**

The Respondent has implemented the following corrective measures:

a. By June 15, 2015, submitted the noncompliance notification for the June 14, 2015 unauthorized discharge to the TCEQ Dallas/Fort Worth Regional Office;

b. By June 16, 2015, repaired a water main break, de-chlorinated the discharge route, conducted water testing, and collected, identified, and properly disposed of the dead fish; and

c. By June 23, 2015, closed the main valve lines, replaced the gate valve on the fire hydrant lead, conducted water testing, and collected, identified, and properly disposed of the dead fish.

**Technical Requirements:**

The Order will require the Respondent to:

a. Within 30 days, update the Facility's operational guidance and conduct employee training to ensure that all self-reporting requirements are properly accomplished, including the timely submittal of unauthorized discharge notifications; and

b. Within 45 days, submit written certification to demonstrate compliance with a.

**Executive Summary – Enforcement Matter – Case No. 51227**
**City of Plano**
**RN103099156**
**Docket No. 2015-1349-WQ-E**

## *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:** Had Darling, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2520; Melissa Cordell, Enforcement Division, MC 219, (512) 239-2483
**TCEQ SEP Coordinator**: N/A
**Respondent:** Bruce D. Glasscock, City Manager, City of Plano, P.O. Box 860358, Plano, Texas 75086
The Honorable Henry LaRosiliere, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086
**Respondent's Attorney:** N/A

# Penalty Calculation Worksheet (PCW)

*Policy Revision 4 (April 2014)* *PCW Revision March 26, 2014*

TCEQ

**DATES** **Assigned** 17-Aug-2015 **PCW** 5-Oct-2015 **Screening** 31-Aug-2015 **EPA Due**

**RESPONDENT/FACILITY INFORMATION**

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

**CASE INFORMATION**

**Enf./Case ID No.** 51227
**Docket No.** 2015-1349-WQ-E
**Media Program(s)** Water Quality
**Multi-Media**
**No. of Violations** 2
**Order Type** Findings
**Government/Non-Profit** Yes
**Enf. Coordinator** Jennifer Graves
**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* $16,250

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

**Compliance History** 50.0% Enhancement *Subtotals 2, 3, & 7* $8,125

Notes: Enhancement for two orders without a denial of liability.

**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* -$3,750

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

Total EB Amounts $13
Estimated Cost of Compliance $3,931

**Capped at the Total EB $ Amount*

**SUM OF SUBTOTALS 1-7** *Final Subtotal* $20,625

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

*Final Penalty Amount* $20,625

**STATUTORY LIMIT ADJUSTMENT** *Final Assessed Penalty* $20,625

**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** $20,625

**Screening Date** 31-Aug-2015 **Docket No.** 2015-1349-WQ-E **PCW**
**Respondent** City of Plano *Policy Revision 4 (April 2014)*
**Case ID No.** 51227 *PCW Revision March 26, 2014*
**Reg. Ent. Reference No.** RN103099156
**Media [Statute]** Water Quality
**Enf. Coordinator** Jennifer Graves

# Compliance History Worksheet

**>> Compliance History *Site* Enhancement (Subtotal 2)**

| Component | Number of... | *Enter Number Here* | Adjust. |
|---|---|---|---|
| NOVs | Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*) | 0 | 0% |
| | Other written NOVs | 0 | 0% |
| Orders | Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 2 | 50% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgments or consent decrees meeting criteria*) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (*number of counts*) | 0 | 0% |
| Emissions | Chronic excessive emissions events (*number of events*) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)* | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*) | 0 | 0% |

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

***Adjustment Percentage (Subtotal 2)*** 50%

**>> 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 orders without a denial of liability.

***Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)*** 50%

**>> Final Compliance History Adjustment**

***Final Adjustment Percentage*** ****capped at 100%*** 50%

**Screening Date** 31-Aug-2015 **Docket No.** 2015-1349-WQ-E **PCW**

**Respondent** City of Plano *Policy Revision 4 (April 2014)*

**Case ID No.** 51227 *PCW Revision March 26, 2014*

**Reg. Ent. Reference No.** RN103099156

**Media [Statute]** Water Quality

**Enf. Coordinator** Jennifer Graves

**Violation Number** 1

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

**Violation Description** Failed to prevent the unauthorized discharge of chlorinated water into or adjacent to water in the state, as documented during investigations conducted on June 15, 2015 and June 23, 2015. Specifically, on June 14, 2015, a water main break occurred at 6100 Mallard Drive, discharging approximately 25,000 gallons of chlorinated potable water into an unnamed series of ponds near the intersection of Trailwood Drive and Widgeon Drive resulting in a fish kill of approximately 259 fish; also on June 23, 2015, approximately 262,500 gallons of chlorinated potable water was discharged from a fire hydrant located at 2260 State Highway 121 into West Rowlett Creek resulting in a fish kill of approximately 698 fish.

**Base Penalty** $25,000

## >> Environmental, Property and Human Health Matrix

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | x | | |
| Potential | | | |

**OR**

**Percent** 30.0%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | | | |

**Percent** 0.0%

Matrix Notes: Human health and 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 2 | 2 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| weekly | |
| monthly | x |
| quarterly | |
| semiannual | |
| annual | |
| single event | |

**Violation Base Penalty** $15,000

Two monthly events are recommended from the date the discharges began (June 14, 2015 and June 23, 2015) to the date the discharges ceased (June 14, 2015 and June 23, 2015).

## Good Faith Efforts to Comply

25.0% Reduction $3,750

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

Notes: The Respondent achieved compliance by June 23, 2015.

**Violation Subtotal** $11,250

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $1

## Statutory Limit Test

**Violation Final Penalty Total** $18,750

**This violation Final Assessed Penalty (adjusted for limits)** $18,750

# Economic Benefit Worksheet

**Respondent** City of Plano
**Case ID No.** 51227
**Reg. Ent. Reference No.** RN103099156
**Media** Water Quality
**Violation No.** 1

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description (No commas or $) | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|---|---|---|---|---|---|---|---|
| **Delayed Costs** | | | | | | | |
| Equipment | | | | 0.00 | $0 | $0 | $0 |
| Buildings | | | | 0.00 | $0 | $0 | $0 |
| Other (as needed) | $1,690 | 14-Jun-2015 | 16-Jun-2015 | 0.01 | $0 | $1 | $1 |
| 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) | $1,966 | 23-Jun-2015 | 23-Jun-2015 | 0.00 | $0 | n/a | $0 |

**Notes for DELAYED costs**: Actual cost to repair a water main break, de-chlorinate the discharge route, conduct water testing, and collect, identify, and properly dispose of dead fish. Date required is the date the first unauthorized discharge began. Final date is the date that the dead fish were collected and properly disposed of. Actual cost to close the main valve lines, replace the gate valve on the fire hydrant lead, conduct water testing, and to collect, identify, and properly dispose of dead fish. Date required is the date the second unauthorized discharge began. Final date is the date that the dead fish were collected and properly disposed of.

**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** $3,656

**TOTAL** $1

**Screening Date** 31-Aug-2015 **Docket No.** 2015-1349-WQ-E **PCW**

**Respondent** City of Plano *Policy Revision 4 (April 2014)*

**Case ID No.** 51227 *PCW Revision March 26, 2014*

**Reg. Ent. Reference No.** RN103099156

**Media [Statute]** Water Quality

**Enf. Coordinator** Jennifer Graves

**Violation Number** 2

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

**Violation Description** Failed to submit a noncompliance notification to the TCEQ Dallas/Fort Worth Regional Office within 24 hours after becoming aware of the unauthorized discharge that occurred on June 14, 2015, as documented during an investigation conducted on June 15, 2015. Specifically, the notification for the June 14, 2015, unauthorized discharge that occurred at 7:00 a.m. was not submitted until 4:00 p.m. on June 15, 2015 (33 hours after the discharge occurred).

**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 permit requirement was not met.

**Adjustment** $23,750

$1,250

## Violation Events

Number of Violation Events 1 — 1 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

0.0% — Reduction $0

| | Before NOE/NOV | NOE/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** $1,250

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $12

## Statutory Limit Test

**Violation Final Penalty Total** $1,875

**This violation Final Assessed Penalty (adjusted for limits)** $1,875

# Economic Benefit Worksheet

**Respondent** City of Plano
**Case ID No.** 51227
**Reg. Ent. Reference No.** RN103099156
**Media** Water Quality
**Violation No.** 2

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description (No commas or $) | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|---|---|---|---|---|---|---|---|
| **Delayed Costs** | | | | | | | |
| Equipment | | | | 0.00 | $0 | $0 | $0 |
| Buildings | | | | 0.00 | $0 | $0 | $0 |
| Other (as needed) | | | | 0.00 | $0 | $0 | $0 |
| Engineering/Construction | | | | 0.00 | $0 | $0 | $0 |
| Land | | | | 0.00 | $0 | n/a | $0 |
| Record Keeping System | $25 | 15-Jun-2015 | 15-Jun-2015 | 0.00 | $0 | n/a | $0 |
| Training/Sampling | $250 | 14-Jun-2015 | 28-May-2016 | 0.96 | $12 | n/a | $12 |
| 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 notify the Dallas/Fort Worth Regional Office within 24 hours of becoming aware of the unauthorized discharge ($25 for each notification and report). Date required is the date the 24-hour noncompliance report was due. Final date is the date the written noncompliance report was submitted. Estimated cost to update the Facility's operational guidance and conduct employee training to ensure that all self-reporting requirements are properly accomplished, including the timely submittal of unauthorized discharge notifications. Date required is the date the unauthorized discharge occurred. Final date is the expected 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** $275

**TOTAL** $12

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

# Compliance History Report

**PENDING** Compliance History Report for CN600352488, RN103099156, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

**Customer, Respondent, or Owner/Operator:** CN600352488, City of Plano **Classification:** SATISFACTORY **Rating:** 6.66

**Regulated Entity:** RN103099156, CITY OF PLANO **Classification:** UNSATISFACTORY **Rating:** 120.00

**Complexity Points:** 1 **Repeat Violator:** NO

**CH Group:** 14 - Other

**Location:** 6100 MALLARD DRIVE (WITH ASSOCIATED WATER MAIN) AND A FIRE HYDRANT LOCATED AT 2260 STATE HIGHWAY 121 IN PLANO, COLLIN CO, TX

**TCEQ Region:** REGION 04 - DFW METROPLEX

**ID Number(s):**
**UTILITIES** REGISTRATION 20070

**Compliance History Period:** September 01, 2010 to August 31, 2015 **Rating Year:** 2015 **Rating Date:** 09/01/2015

**Date Compliance History Report Prepared:** October 05, 2015

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** October 05, 2010 to October 05, 2015

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

**Name:** Jennifer Graves **Phone:** (956) 430-6023

## 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: 06/29/2014 ADMINORDER 2012-0760-WQ-E (Findings Order-Agreed Order Without Denial)

Classification: Moderate

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

Description: Failure to report an unauthorized discharge of wastewater within 24 hours of the discharge. Initial reports of the unauthorized discharges that occurred on January 25, 2012, were received in the DFW Region Office on February 8, 2012.

Classification: Moderate

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

Description: Failure to prevent the unauthorized discharge of untreated wastewater into or adjacent to waters of the state. On January 25, 2012, the City of Plano experienced two unauthorized discharges. The first was located at 1100 Campbell Rd. with the discharge volume reported at 13,200 gallons. The second was located at 3733 E. 18th St. with the discharge volume reported at 760 gallons (820 gallons corrected figure).

2 Effective Date: 10/05/2014 ADMINORDER 2013-1868-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 the unauthorized discharge of of potable water.

Classification: Minor

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

Description: Failure to timely submit a noncompliance notification to the TCEQ Dallas/Fort Worth Regional Office within 24 hours of the unauthorized discharges.

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

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

N/A

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

**F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

| | | |
|---|---|---|
| **IN THE MATTER OF AN** | § | **BEFORE THE** |
| **ENFORCEMENT ACTION** | § | |
| **CONCERNING** | § | **TEXAS COMMISSION ON** |
| **CITY OF PLANO** | § | |
| **RN103099156** | § | **ENVIRONMENTAL QUALITY** |

## AGREED ORDER
## DOCKET NO. 2015-1349-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 public water supply with an associated water main located at 6100 Mallard Drive and a fire hydrant located at 2260 State Highway 121 in Plano, Collin County, Texas (the "Facility").

2. The Respondent has discharged a pollutant into or adjacent to any water in the state under TEX. WATER CODE ch. 26.

3. During investigations conducted on June 15, 2015 and June 23, 2015, TCEQ staff documented that the Respondent did not prevent the unauthorized discharge of chlorinated water into or adjacent to water in the state. Specifically, on June 14, 2015, a water main break occurred at 6100 Mallard Drive, discharging approximately 25,000 gallons of chlorinated potable water into an unnamed series of ponds near the intersection of Trailwood Drive and Widgeon Drive resulting in a fish kill of approximately 259 fish; also on June 23, 2015, approximately 262,500 gallons of chlorinated potable water was discharged from a fire hydrant located at 2260 State Highway 121 into West Rowlett Creek resulting in a fish kill of approximately 698 fish.

4. During an investigation conducted on June 15, 2015, TCEQ staff documented that the Respondent did not timely submit a noncompliance notification to the TCEQ Dallas/Fort Worth Regional Office within 24 hours after becoming aware of the unauthorized discharge that occurred on June 14, 2015. Specifically, the notification for the June 14, 2015, unauthorized discharge that occurred at 7:00 a.m. was not submitted until 4:00 p.m. on June 15, 2015 (33 hours after the discharge occurred).

5. The Respondent received notices of the violations on August 17, 2015 and September 10, 2015, respectively.

6. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:

   a. By June 15, 2015, submitted the noncompliance notification for the June 14, 2015 unauthorized discharge to the TCEQ Dallas/Fort Worth Regional Office.

   b. By June 16, 2015, repaired a water main break, de-chlorinated the discharge route, conducted water testing, and collected, identified, and properly disposed of the dead fish.

   c. By June 23, 2015, closed the main valve lines, replaced the gate valve on the fire hydrant lead, conducted water testing, and collected, identified, and properly disposed of the dead fish.

## II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.

2. As evidenced by Findings of Fact No. 3, the Respondent failed to prevent the unauthorized discharge of chlorinated water into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(2).

3. As evidenced by Findings of Fact No. 4, the Respondent failed to submit a noncompliance notification to the TCEQ Dallas/Fort Worth Regional Office within 24 hours after becoming aware of the unauthorized discharge that occurred on June 14, 2015, in violation of TEX. WATER CODE § 26.039(b).

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 Twenty Thousand Six Hundred Twenty-Five Dollars ($20,625) 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 Twenty Thousand Six Hundred Twenty-Five Dollar ($20,625) 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 Twenty Thousand Six Hundred Twenty-Five Dollars ($20,625) 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. 2015-1349-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 undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that all self-reporting requirements are properly accomplished, including the submittal of unauthorized discharge notifications.

b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

> "I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification 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 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 effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

# SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission — Date

For the Executive Director — Date 5/16/16

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.

Signature — Date 11/03/15

Bruce D. Glasscock — City Manager

Name (Printed or typed) — Title

Authorized Representative of
City of Plano

**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.

APPROVED AS TO FORM:

BY: _____
Paige Mims, City Attorney