

Executive Summary – Enforcement Matter – Case No. 51690

City of Arlington

RN104950134

Docket No. 2016-0012-MWD-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:

MWD

Small Business:

No

Location(s) Where Violation(s) Occurred:

City of Arlington Collection System, located near 905 Wayland Drive and near 5806 Diamond Oaks Court, Arlington, Tarrant County

Type of Operation:

Wastewater collection system with associated sewer mains

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: June 3, 2016

Comments Received: No

Penalty Information

Total Penalty Assessed: \$26,250

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: \$26,250

Name of SEP: Residential Backflow Protection Testing, Repair, or Replacement (Custom)

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. 51690
City of Arlington
RN104950134
Docket No. 2016-0012-MWD-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: June 3, 2015 and June 24, 2015

Date(s) of NOE(s): December 11, 2015

Violation Information

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)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent has implemented the following corrective measures:

a. By June 8, 2015:

i. Ceased and contained the unauthorized discharge of wastewater, installed bypass pumping to pump the wastewater from the creek back into the collection system, and disinfected the area;

ii. Removed and properly disposed of the dead fish; and

iii. Replaced the collapsed wastewater collection line.

b. By June 24, 2015:

i. Ceased and contained the unauthorized discharge of wastewater, installed bypass pumping to pump the wastewater from Fish Creek back into the collection system, and disinfected the area;

ii. Removed and properly disposed of the dead fish; and

iii. Replaced the collapsed sewer main.

Technical Requirements:

The Order will require the Respondent to implement and complete a SEP (see SEP Attachment A).

Executive Summary – Enforcement Matter – Case No. 51690
City of Arlington
RN104950134
Docket No. 2016-0012-MWD-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: Farhaud Abbaszadeh, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-0779; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548
TCEQ SEP Coordinator: Meaghan Bailey, SEP Coordinator, Litigation Division, MC 175, (512) 239-0205
Respondent: Walter J. Pishkur, Director of Water Utilities, City of Arlington, P.O. Box 90231, Arlington, Texas 76004
The Honorable Jeff Williams, Mayor, City of Arlington, P.O. Box 90231, Arlington, Texas 76004
Respondent's Attorney: N/A

Attachment A
Docket Number: 2016-0012-MWD-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Arlington
Penalty Amount:	Twenty-Six Thousand Two Hundred Fifty Dollars (\$26,250)
SEP Offset Amount:	Twenty-Six Thousand Two Hundred Fifty Dollars (\$26,250)
Type of SEP:	Custom
Project Name:	<i>Residential Backflow Protection Testing, Repair, or Replacement</i>
Location of SEP:	Tarrant County

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

1. Project Description

A. Project

Respondent shall hire a contractor to test low-hazard backflow assemblies on residential irrigation systems. Low-hazard assemblies are only tested after installation. The low-hazard assembly is subject to getting stuck open or wearing to a point that it does not function properly. The improvements will help protect the public drinking water supply from cross-connections or backflow of contaminants. Priority testing will be given to assemblies in place the longest. The SEP Offset Amount will be used to pay for the contractor, supplies, materials, and equipment rental in order to repair or replace the backflow assemblies. Any advertisement or publication 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, below. No portion of the SEP Offset Amount shall be spent on administrative costs, including but not limited to operating costs, reporting expenses, handling of expenses, project coordination, liability, or equipment breakdowns.

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

B. Environmental Benefit

A backflow is an undesirable reversal of flow of liquid, gas, or solid into the potable water supply. A backflow prevention assembly is used to protect potable water supplies from contamination or pollution due to the backflow. During incidents of backflow, chemical and microbial contaminants may cause waterborne illnesses, with contamination affecting a number of service connections. Repairing or replacing failing backflow assemblies is invaluable to the protection of public health and the environment.

C. Minimum Expenditure

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

Estimated Cost Schedule

Item	Quantity	Cost	Units	Total
Backflow assembly test	70	\$40	Each	\$2,800
Backflow assembly	35	\$200	Each	\$7,000
Backflow assembly enclosure	35	\$60	Each	\$2,100
Backflow assembly installation	35	\$350	Each	\$12,250
Permits	35	\$85	Each	\$2,975
Total				\$27,125

2. Performance Schedule

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

3. Records and Reporting

A. Progress Report

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

the TCEQ in 90-day increments containing detailed information on all actions completed on the Project to date as set forth in the Reporting Schedule table below:

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

B. Final Report

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

1. Itemized list of expenditures and total cost of the Project;
2. Copies of invoices, paid receipts, cleared checks or payment records corresponding to the itemized list in paragraph 3.B.1., above;
3. Copies of proof of advertisement of the event (the advertisement must include the statement that the SEP was performed as a result of a TCEQ enforcement action);
4. A certified/notarized statement of quantifiable environmental benefit;
5. Detailed map showing specific locations of the testing, repair or replacement site(s);
6. Dated photographs of the purchased materials and supplies; before and after work being performed during the installation process; and of the completed Project
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	14-Dec-2015	Screening	16-Dec-2015	EPA Due	
	PCW	16-Dec-2015				

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

CASE INFORMATION		No. of Violations	2
Enf./Case ID No.	51690	Order Type	Findings
Docket No.	2016-0012-MWD-E	Government/Non-Profit	Yes
Media Program(s)	Water Quality	Enf. Coordinator	Farhau Abbaszadeh
Multi-Media		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	\$15,000
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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.
Compliance History	100.0% Adjustment	Subtotals 2, 3, & 7
		\$15,000

Notes: Enhancement for three orders without denial of liability and Repeat Violator status.

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	-\$3,750
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$40
 Estimated Cost of Compliance: \$32,001
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$26,250
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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	\$26,250
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$26,250
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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	\$26,250
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Screening Date 16-Dec-2015

Docket No. 2016-0012-MWD-E

PCW

Respondent City of Arlington

Policy Revision 4 (April 2014)

Case ID No. 51690

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN104950134

Media [Statute] Water Quality

Enf. Coordinator Farhaud Abbaszadeh

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

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

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Enhancement for three orders without denial of liability and Repeat Violator status.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%

Screening Date 16-Dec-2015

Docket No. 2016-0012-MWD-E

PCW

Respondent City of Arlington

Policy Revision 4 (April 2014)

Case ID No. 51690

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN104950134

Media [Statute] Water Quality

Enf. Coordinator Farhaud Abbaszadeh

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, as documented during an investigation conducted on June 3, 2015. Specifically, approximately 200,000 gallons of untreated wastewater discharged from a collapsed wastewater collection line near 905 Wayland Drive into an unnamed creek between May 29, 2015 and June 5, 2015, resulting in a fish kill of approximately 17 fish.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (30.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0.0%).

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

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 1 Number of violation days 10

Table for event frequency: daily, weekly, monthly (marked with x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$7,500

One monthly event is recommended from the date the discharge began (May 29, 2015) to the date remediation activities were completed (June 8, 2015).

Good Faith Efforts to Comply

25.0% Reduction \$1,875

Table for Good Faith Efforts: Extraordinary, Ordinary (marked with x), N/A (mark with x).

Notes The Respondent achieved compliance on June 8, 2015.

Violation Subtotal \$5,625

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$37

Violation Final Penalty Total \$13,125

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

Economic Benefit Worksheet

Respondent City of Arlington
Case ID No. 51690
Reg. Ent. Reference No. RN104950134
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	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	\$27,001	29-May-2015	8-Jun-2015	0.03	\$37	n/a	\$37
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Actual cost to remove and properly dispose of the dead fish; replace the collection line; cease and contain the discharge; pump the wastewater from the creek back into the collection system; disinfect the area; and install bypass pumping. Date required is the date the unauthorized discharge began. Final date is the date all of the required corrective actions were completed.

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	\$27,001	TOTAL	\$37
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Screening Date 16-Dec-2015

Docket No. 2016-0012-MWD-E

PCW

Respondent City of Arlington

Policy Revision 4 (April 2014)

Case ID No. 51690

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN104950134

Media [Statute] Water Quality

Enf. Coordinator Farhaud Abbaszadeh

Violation Number 2

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, as documented during an investigation conducted on June 24, 2015. Specifically, approximately 418,200 gallons of untreated wastewater discharged from a broken sewer main into Fish Creek near 5806 Diamond Oaks Court between June 20, 2015 and June 23, 2015, resulting in a fish kill of approximately 2,530 fish.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent 30.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$17,500

\$7,500

Violation Events

Number of Violation Events 1

4 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$7,500

One monthly event is recommended from the date the discharge began (June 20, 2015) to the date corrective actions were completed (June 24, 2015).

Good Faith Efforts to Comply

25.0%

Reduction \$1,875

Before NOE/NOV NOE/NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary	x	
N/A		(mark with x)

Notes

The Respondent achieved compliance on June 24, 2015.

Violation Subtotal \$5,625

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$13,125

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

Economic Benefit Worksheet

Respondent City of Arlington
Case ID No. 51690
Reg. Ent. Reference No. RN104950134
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				0.00	\$0	n/a	\$0
Remediation/Disposal	\$5,000	20-Jun-2015	24-Jun-2015	0.01	\$3	n/a	\$3
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Actual cost to remove and properly dispose of the dead fish; replace the sewer main; cease and contain the discharge; pump the wastewater from Fish Creek back into the collection system; disinfect the area; and install bypass pumping. Date required is the date the unauthorized discharge began. Final date is the date all of the required corrective actions were completed.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$5,000	TOTAL	\$3
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The TCEQ is committed to accessibility.

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



Compliance History Report

PUBLISHED Compliance History Report for CN600131791, RN104950134, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

Customer, Respondent, or Owner/Operator: CN600131791, City of Arlington
Classification: SATISFACTORY **Rating:** 9.25
Regulated Entity: RN104950134, CITY OF ARLINGTON COLLECTION SYSTEM
Classification: UNSATISFACTORY **Rating:** 350.00
Complexity Points: 1
Repeat Violator: YES
CH Group: 08 - Sewage Treatment Facilities
Location: NEAR 905 WAYLAND DRIVE AND NEAR 5806 DIAMOND OAKS COURT, ARLINGTON, TEXAS, TARRANT COUNTY
TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s):

WATER QUALITY NON PERMITTED ID NUMBER
R04104950134

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

Date Compliance History Report Prepared: December 15, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 11, 2011 to January 11, 2016

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

Name: Farhaud Abbaszadeh

Phone: (512) 239-0779

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: 06/20/2011 ADMINORDER 2010-1625-WQ-E (Findings Order-Agreed Order Without Denial)
Classification: Major
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
Description: Failure to prevent an unauthorized discharge of wastewater into or adjacent to water of the state.
- 2 Effective Date: 12/15/2012 ADMINORDER 2011-2258-WQ-E (Findings Order-Agreed Order Without Denial)
Classification: Major
Citation: TWC Chapter 26 26.121
Description: Failure to prevent an unauthorized discharge, release, or spill which resulted in a documented serious impact to the environment.
- 3 Effective Date: 01/24/2014 ADMINORDER 2013-0373-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 wastewater from the collection system into or adjacent to any water in the state.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1 October 07, 2015 (1260641)

E. Written notices of violations (NOV) (CEDS 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
ENFORCEMENT ACTION
CONCERNING
CITY OF ARLINGTON
RN104950134**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2016-0012-MWD-E**

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Arlington ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a wastewater collection system with associated sewer mains located near 905 Wayland Drive and near 5806 Diamond Oaks Court in Arlington, Tarrant County, Texas (the "Sites").

2. The Respondent has discharged sewage into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation conducted on June 3, 2015, TCEQ staff documented that approximately 200,000 gallons of untreated wastewater discharged from a collapsed wastewater collection line near 905 Wayland Drive into an unnamed creek between May 29, 2015 and June 5, 2015, resulting in a fish kill of approximately 17 fish.
4. During an investigation conducted on June 24, 2015, TCEQ staff documented that approximately 418,200 gallons of untreated wastewater discharged from a broken sewer main into Fish Creek near 5806 Diamond Oaks Court between June 20, 2015 and June 23, 2015, resulting in a fish kill of approximately 2,530 fish.
5. The Respondent received notices of the violations on December 12, 2015 and December 14, 2015.
6. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Sites:
 - a. By June 8, 2015:
 - i. Ceased and contained the unauthorized discharge of wastewater, installed bypass pumping to pump the wastewater from the creek back into the collection system, and disinfected the area;
 - ii. Removed and properly disposed of the dead fish; and
 - iii. Replaced the collapsed wastewater collection line.
 - b. By June 24, 2015:
 - i. Ceased and contained the unauthorized discharge of wastewater, installed bypass pumping to pump the wastewater from Fish Creek back into the collection system, and disinfected the area;
 - ii. Removed and properly disposed of the dead fish; and
 - iii. Replaced the collapsed sewer main.

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 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).
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-Six Thousand Two Hundred Fifty Dollars (\$26,250) 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. Twenty-Six Thousand Two Hundred Fifty Dollars (\$26,250) 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 Twenty-Six Thousand Two Hundred Fifty Dollars (\$26,250) 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 Arlington, Docket No. 2016-0012-MWD-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 5 above, Twenty-Six Thousand Two Hundred Fifty Dollars (\$26,250) 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 Site operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this 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 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 Order or in any plan, report, or other document submitted pursuant to this 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

8/8/16

Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Arlington. I am authorized to agree to the attached Agreed Order on behalf of the City of Arlington, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, the City of Arlington waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions;
- and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

6/24/16

Date

Walter J. Pishkur

Name (Printed or typed)
Authorized Representative of
City of Arlington

Director of Water Utilities

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: 2016-0012-MWD-E
SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Arlington
Penalty Amount:	Twenty-Six Thousand Two Hundred Fifty Dollars (\$26,250)
SEP Offset Amount:	Twenty-Six Thousand Two Hundred Fifty Dollars (\$26,250)
Type of SEP:	Custom
Project Name:	<i>Residential Backflow Protection Testing, Repair, or Replacement</i>
Location of SEP:	Tarrant County

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

1. Project Description

A. Project

Respondent shall hire a contractor to test low-hazard backflow assemblies on residential irrigation systems. Low-hazard assemblies are only tested after installation. The low-hazard assembly is subject to getting stuck open or wearing to a point that it does not function properly. The improvements will help protect the public drinking water supply from cross-connections or backflow of contaminants. Priority testing will be given to assemblies in place the longest. The SEP Offset Amount will be used to pay for the contractor, supplies, materials, and equipment rental in order to repair or replace the backflow assemblies. Any advertisement or publication 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, below. No portion of the SEP Offset Amount shall be spent on administrative costs, including but not limited to operating costs, reporting expenses, handling of expenses, project coordination, liability, or equipment breakdowns.

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

B. Environmental Benefit

A backflow is an undesirable reversal of flow of liquid, gas, or solid into the potable water supply. A backflow prevention assembly is used to protect potable water supplies from contamination or pollution due to the backflow. During incidents of backflow, chemical and microbial contaminants may cause waterborne illnesses, with contamination affecting a number of service connections. Repairing or replacing failing backflow assemblies is invaluable to the protection of public health and the environment.

C. Minimum Expenditure

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

Estimated Cost Schedule

Item	Quantity	Cost	Units	Total
Backflow assembly test	70	\$40	Each	\$2,800
Backflow assembly	35	\$200	Each	\$7,000
Backflow assembly enclosure	35	\$60	Each	\$2,100
Backflow assembly installation	35	\$350	Each	\$12,250
Permits	35	\$85	Each	\$2,975
Total				\$27,125

2. Performance Schedule

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

3. Records and Reporting

A. Progress Report

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

the TCEQ in 90-day increments containing detailed information on all actions completed on the Project to date as set forth in the Reporting Schedule table below:

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

B. Final Report

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

1. Itemized list of expenditures and total cost of the Project;
2. Copies of invoices, paid receipts, cleared checks or payment records corresponding to the itemized list in paragraph 3.B.1., above;
3. Copies of proof of advertisement of the event (the advertisement must include the statement that the SEP was performed as a result of a TCEQ enforcement action);
4. A certified/notarized statement of quantifiable environmental benefit;
5. Detailed map showing specific locations of the testing, repair or replacement site(s);
6. Dated photographs of the purchased materials and supplies; before and after work being performed during the installation process; and of the completed Project
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.