

**Executive Summary – Enforcement Matter – Case No. 61149**

**City of Austin**

**RN101607901**

**Docket No. 2021-1043-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:**

Walnut Creek WWTP, 7113 Farm-to-Market Road 969, Austin, Travis County

**Type of Operation:**

Wastewater treatment facility

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

**Texas Register Publication Date:** October 27, 2023

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$13,125

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**Supplemental Environmental Project (“SEP”) Conditional Offset:** \$13,125

Name of SEP: Austin Parks Foundation (Third-Party Pre-Approved)

**Compliance History Classifications:**

Person/CN - Satisfactory

Site/RN - Satisfactory

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** January 2021

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** May 26, 2021

**Date(s) of NOE(s):** July 26, 2021

**Executive Summary – Enforcement Matter – Case No. 61149**  
**City of Austin**  
**RN101607901**  
**Docket No. 2021-1043-MWD-E**

***Violation Information***

1. Failed to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state [TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), Texas Pollutant Discharge Elimination System Permit No. WQ0010543011, Permit Conditions No. 2.g].
2. Failed to pay outstanding Voluntary Cleanup Program fees for TCEQ Financial Administration Account No. 0901057 [TEX. HEALTH & SAFETY CODE § 361.603(b)(2) and TEX. WATER CODE § 5.702].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Respondent implemented the following corrective measures by May 26, 2021:

- a. Ceased discharge of wastewater sludge;
- b. Disposed of dead fish;
- c. Excavated and repaired the broken ductile iron transfer pipe;
- d. Cleaned all areas where sludge accumulated;
- e. Disposed of sludge; and
- f. Placed a pump at the culvert downstream of the pipe break to help aerate the water and prevent additional fish casualties.

**Technical Requirements:**

1. The Order will require the Respondent to implement and complete a SEP (see SEP Attachment A).
2. The Order will also require the Respondent to, within 30 days, submit payment for all outstanding assessed fees for TCEQ Financial Administration Account No. 0901057.

**Executive Summary – Enforcement Matter – Case No. 61149**  
**City of Austin**  
**RN101607901**  
**Docket No. 2021-1043-MWD-E**

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Cheryl Thompson, Enforcement Division, Enforcement Team 1, MC R-04, (817) 588-5865; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

**TCEQ SEP Coordinator:** Stuart Beckley, SEP Coordinator, Enforcement Division, MC 219, (512) 239-3565

**SEP Third-Party Administrator:** Austin Parks Foundation, P.O. Box 6160, Austin, Texas 78762

**Respondent:** Shay Ralls Roalson, P.E., Water Director, City of Austin, 625 East 10th Street, Austin, Texas 78701

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

<b>DATES</b>	<b>Assigned</b>	2-Aug-2021	<b>Screening</b>	5-Aug-2021	<b>EPA Due</b>	
	<b>PCW</b>	6-Aug-2021				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	City of Austin
<b>Reg. Ent. Ref. No.</b>	RN101607901
<b>Facility/Site Region</b>	11-Austin
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	61149	<b>No. of Violations</b>	2
<b>Docket No.</b>	2021-1043-MWD-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Cheryl Thompson
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$12,500
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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.

<b>Compliance History</b>	30.0%	Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	\$3,750
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Notes: Enhancement for one NOV with same/similar violations, and one order without a denial of liability.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	-\$3,125
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<b>Economic Benefit</b>	0.0%	Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$24  
 Estimated Cost of Compliance: \$177,109  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$13,125
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$13,125
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$13,125
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<b>DEFERRAL</b>	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	\$13,125
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**Screening Date** 5-Aug-2021

**Docket No.** 2021-1043-MWD-E

**PCW**

**Respondent** City of Austin

*Policy Revision 5 (January 28, 2021)*

**Case ID No.** 61149

*PCW Revision February 11, 2021*

**Reg. Ent. Reference No.** RN101607901

**Media** Water Quality

**Enf. Coordinator** Cheryl Thompson

### Compliance History Worksheet

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

Component	Number of...	Number	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> )	1	5%
	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	1	25%
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%
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 one NOV with same/similar violations, and one order without a denial of liability.

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

#### >> Final Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** 30%

<b>Screening Date</b> 5-Aug-2021	<b>Docket No.</b> 2021-1043-MWD-E	<b>PCW</b>
<b>Respondent</b> City of Austin		<i>Policy Revision 5 (January 28, 2021)</i>
<b>Case ID No.</b> 61149		<i>PCW Revision February 11, 2021</i>
<b>Reg. Ent. Reference No.</b> RN101607901		
<b>Media</b> Water Quality		
<b>Enf. Coordinator</b> Cheryl Thompson		

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>	<b>Harm</b>				
	<b>Release</b>	Major	Moderate		Minor
	Actual	<input type="text" value="x"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				<b>Percent</b> <input type="text" value="50.0%"/>	

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0.0%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text" value="x"/>	<input type="text"/>
N/A	<input type="text"/>	<input type="text"/>

**Notes**

**Violation Subtotal**

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount**  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

# Economic Benefit Worksheet

**Respondent** City of Austin  
**Case ID No.** 61149  
**Reg. Ent. Reference No.** RN101607901  
**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	Costs Saved	EB Amount
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### 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	\$177,109	25-May-2021	26-May-2021	0.00	\$24	n/a	\$24
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

**Notes for DELAYED costs**

Actual Remediation/Disposal Cost to cease discharging, dispose of dead fish, excavate and repair the broken ductile iron transfer pipe, clean all areas where sludge accumulated, dispose of sludge, and place a pump at the culvert downstream of the pipe break to help aerate the water and prevent additional fish casualties. The Date Required is the date of the unauthorized discharge, and the Final Date is the date of compliance.

### Avoided Costs

**ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance \$177,109

**TOTAL** \$24

<b>Screening Date</b>	5-Aug-2021	<b>Docket No.</b>	2021-1043-MWD-E	<b>PCW</b>
<b>Respondent</b>	City of Austin			<i>Policy Revision 5 (January 28, 2021)</i>
<b>Case ID No.</b>	61149			<i>PCW Revision February 11, 2021</i>
<b>Reg. Ent. Reference No.</b>	RN101607901			
<b>Media</b>	Water Quality			
<b>Enf. Coordinator</b>	Cheryl Thompson			
<b>Violation Number</b>	2			
<b>Rule Cite(s)</b>	Tex. Health & Safety Code § 361.603(b)(2) and Tex. Water Code § 5.702			
<b>Violation Description</b>	Failed to pay outstanding Voluntary Cleanup Program fees for TCEQ Financial Administration Account No. 0901057 for Fiscal Year 2021.			
		<b>Base Penalty</b>	\$25,000	

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual				<b>Percent</b> 0.0%
Potential					

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
					<b>Percent</b> 0.0%
<b>Matrix Notes</b>					
					<b>Adjustment</b> \$25,000

\$0

**Violation Events**

Number of Violation Events		Number of violation days		
	daily			<b>Violation Base Penalty</b> \$0
	weekly			
	monthly			
	quarterly			
	semiannual			
	annual			
	single event			

No additional Administrative penalty was calculated for this violation as penalties and interest will be assessed on the next billing cycle.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

	Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer	
Extraordinary			
Ordinary			
N/A			
<b>Notes</b>			
			<b>Violation Subtotal</b> \$0

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

<b>Estimated EB Amount</b>	\$0	<b>Violation Final Penalty Total</b>	\$0
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		\$0	



# Economic Benefit Worksheet

**Respondent** City of Austin  
**Case ID No.** 61149  
**Reg. Ent. Reference No.** RN101607901  
**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	Costs Saved	EB Amount
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### 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

N/A

### Avoided Costs

**ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$0

**TOTAL**

\$0

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# Compliance History Report

Compliance History Report for CN600135198, RN101607901, Rating Year 2021 which includes Compliance History (CH) components from September 1, 2016, through August 31, 2021.

<b>Customer, Respondent, or Owner/Operator:</b>	CN600135198, City of Austin	<b>Classification:</b>	SATISFACTORY	<b>Rating:</b>	3.79
<b>Regulated Entity:</b>	RN101607901, WALNUT CREEK WWTP	<b>Classification:</b>	SATISFACTORY	<b>Rating:</b>	8.00
<b>Complexity Points:</b>	11	<b>Repeat Violator:</b>	NO		
<b>CH Group:</b>	08 - Sewage Treatment Facilities				
<b>Location:</b>	7113 Farm-to-Market Road 969, Austin, Travis County, Texas				
<b>TCEQ Region:</b>	REGION 11 - AUSTIN				
<b>ID Number(s):</b>					
<b>STORMWATER PERMIT TXR05FD22</b>		<b>STORMWATER PERMIT TXR15514B</b>			
<b>STORMWATER PERMIT TXR1515BN</b>		<b>WASTEWATER EPA ID TX0046981</b>			
<b>WASTEWATER PERMIT WQ0010543011</b>		<b>WASTEWATER AUTHORIZATION R10543011</b>			
<b>INDUSTRIAL AND HAZARDOUS WASTE EPA ID TXD981056427</b>		<b>INDUSTRIAL AND HAZARDOUS WASTE SOLID WASTE REGISTRATION # (SWR) 66306</b>			

**Compliance History Period:** September 01, 2016 to August 31, 2021      **Rating Year:** 2021      **Rating Date:** 09/01/2021

**Date Compliance History Report Prepared:** February 07, 2022

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** February 07, 2017 to February 07, 2022

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

**Name:** Cheryl Thompson      **Phone:** (817) 588-5865

## 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  |

## Components (Multimedia) for the Site Are Listed in Sections A - J

### **A. Final Orders, court judgments, and consent decrees:**

- 1      Effective Date: 09/28/2020      ADMINORDER 2020-0068-MWD-E (Findings Order-Agreed Order Without Denial)
- Classification: Major
- Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)  
              30 TAC Chapter 305, SubChapter F 305.125(1)  
              30 TAC Chapter 305, SubChapter F 305.125(5)
- Rqmt Prov: WQ0010543011 PERMIT
- Description: Failure to prevent the discharge of sewage into water of the state. Specifically the City of Austin Water discharged approximately 25,000 gal of wastewater into Bull Creek. This wastewater discharge caused a fish kill of approximately 165 fish.

### **B. Criminal convictions:**

N/A

### **C. Chronic excessive emissions events:**

N/A

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

Item 1	February 15, 2017	(1404574)			
Item 2	March 15, 2017	(1411666)			
Item 3	April 19, 2017	(1418164)	Item 32	October 13, 2019	(1613774)
Item 4	May 04, 2017	(1409832)	Item 33	November 18, 2019	(1619585)
Item 5	May 13, 2017	(1425757)	Item 34	December 20, 2019	(1626939)
Item 6	June 16, 2017	(1431800)	Item 35	January 19, 2020	(1634579)
Item 7	July 07, 2017	(1440377)	Item 36	February 17, 2020	(1641194)
Item 8	August 15, 2017	(1444058)	Item 37	March 19, 2020	(1647709)
Item 9	September 18, 2017	(1450662)	Item 38	April 17, 2020	(1654058)
Item 10	November 09, 2017	(1461985)	Item 39	May 19, 2020	(1660630)
Item 11	December 18, 2017	(1468369)	Item 40	June 17, 2020	(1667150)
Item 12	January 14, 2018	(1475068)	Item 41	July 20, 2020	(1674102)
Item 13	February 18, 2018	(1487284)	Item 42	September 15, 2020	(1687446)
Item 14	March 17, 2018	(1490959)	Item 43	September 29, 2020	(1680875)
Item 15	April 17, 2018	(1494205)	Item 44	October 19, 2020	(1693785)
Item 16	May 11, 2018	(1501155)	Item 45	November 18, 2020	(1714044)
Item 17	June 18, 2018	(1508242)	Item 46	December 18, 2020	(1714045)
Item 18	July 18, 2018	(1514574)	Item 47	December 21, 2020	(1697466)
Item 19	August 12, 2018	(1520630)	Item 48	January 17, 2021	(1714046)
Item 20	October 18, 2018	(1534155)	Item 49	February 16, 2021	(1727110)
Item 21	November 19, 2018	(1541989)	Item 50	March 19, 2021	(1727111)
Item 22	December 17, 2018	(1545760)	Item 51	April 20, 2021	(1727112)
Item 23	January 14, 2019	(1561284)	Item 52	May 17, 2021	(1740859)
Item 25	March 18, 2019	(1561283)	Item 53	June 15, 2021	(1740860)
Item 26	April 16, 2019	(1572358)	Item 54	July 16, 2021	(1752231)
Item 27	May 15, 2019	(1584328)	Item 55	August 14, 2021	(1757680)
Item 28	June 17, 2019	(1584329)	Item 56	September 16, 2021	(1766867)
Item 29	June 24, 2019	(1549336)	Item 57	October 15, 2021	(1777361)
Item 30	July 18, 2019	(1593698)	Item 59	November 17, 2021	(1784159)
Item 31	September 30, 2019	(1600026)			

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

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

1 Date: 08/03/2021 (1736156)

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 30 TAC Chapter 305, SubChapter F 305.125(5)  
 30 TAC Chapter 317 317.1(a)  
 30 TAC Chapter 317 317.4(d)(2)  
 Operational Requirements No. 1 PERMIT  
 Description: Failed to properly operate and maintain the Facility and all of its systems of collection, treatment, and disposal.

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
 30 TAC Chapter 305, SubChapter F 305.125(5)  
 30 TAC Chapter 317 317.1(a)  
 Operational Requirements No. 1, Page 13 PERMIT  
 Permit Conditions No. 2.d, Page 9 PERMIT  
 Description: Failed to properly operate and maintain the Facility and all of its systems of collection, treatment, and disposal.

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 217, SubChapter A 217.3(b)  
 30 TAC Chapter 217, SubChapter F 217.152(c)(2)  
 30 TAC Chapter 305, SubChapter F 305.125(1)  
 30 TAC Chapter 305, SubChapter F 305.125(5)  
 Operational Requirements No. 1, Page 13 PERMIT  
 Description: Failed to ensure that all domestic wastewater treatment facilities, treatment units, collection systems, collection system units, and associated components must be installed, operated, and maintained in accordance with the engineering report, the

associated plans and specifications approved by the executive director, and to ensure continuous compliance with all applicable statutory and regulatory requirements.

Self Report? NO Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)  
30 TAC Chapter 217, SubChapter A 217.3(a)  
30 TAC Chapter 217, SubChapter A 217.3(b)  
30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 305, SubChapter F 305.125(5)  
30 TAC Chapter 307 307.4(b)(6)  
30 TAC Chapter 317 317.1(a)  
Fin. Eff. Lim.&Mon. Req. No. 4, Pg. 2b PERMIT  
In. I Eff. Lim. & Mon. Req. No. 4, Pg. 2 PERMIT  
In. II Ef. Lim.&Mon. Req. No. 4, Pg. 2a PERMIT  
Operational Requirements No. 1, Page 13 PERMIT  
Description: Failed to prevent the discharge of visible foam in other than trace amounts and failed to prevent foaming or frothing of a persistent nature.  
Self Report? NO Classification: Moderate  
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)  
30 TAC Chapter 210, SubChapter A 210.5(a)  
30 TAC Chapter 210, SubChapter B 210.22(e)  
Chapter 210 Auth.: Section I.H, Page 2 PERMIT  
Description: Failed to prevent the unauthorized discharge of Chapter 210 reclaimed effluent into or adjacent to water in the state.

**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 AUSTIN  
RN101607901**

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

## **AGREED ORDER DOCKET NO. 2021-1043-MWD-E**

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Austin (the "Respondent") under the authority of TEX. WATER CODE chs. 5, 7, and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this Order to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including 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 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 agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this 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 treatment facility located at 7113 Farm-to-Market Road 969 in Austin, Travis County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. During an investigation conducted on May 26, 2021, an investigator documented that approximately 61,000 gallons of wastewater sludge leaked from a broken transfer pipe located at the southwest corner of Farm-to-Market Road 969 and Blue Bluff Drive into Elm Creek, resulting in a fish kill of approximately 50 fish on May 25, 2021.
3. During a record review conducted on August 5, 2021, an investigator documented that the Respondent did not pay outstanding Voluntary Cleanup Program fees for TCEQ Financial Administration Account No. 0901057 for Fiscal Year 2021.
4. The Executive Director recognizes that the Respondent implemented the following corrective measures at the Facility by May 26, 2021:
  - a. By ceasing discharge of wastewater sludge;

- b. By disposing of dead fish;
- c. By excavating and repairing the broken ductile iron transfer pipe;
- d. By cleaning all areas where sludge accumulated;
- e. By disposing of sludge; and
- f. By placing a pump at the culvert downstream of the pipe break to help aerate the water and prevent additional fish casualties.

## **II. CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, the Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5 and 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, the Respondent failed to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state, in violation of TEX. WATER CODE § 26.121(a)(1), 30 TEX. ADMIN. CODE § 305.125(1), Texas Pollutant Discharge Elimination System Permit No. WQ0010543011, Permit Conditions No. 2.g.
3. As evidenced by Finding of Fact No. 3, the Respondent failed to pay outstanding Voluntary Cleanup Program fees for TCEQ Financial Administration Account No. 0901057, in violation of TEX. HEALTH & SAFETY CODE § 361.603(b)(2) and TEX. WATER CODE § 5.702.
4. Pursuant to TEX. WATER CODE § 7.051, the TCEQ has the authority to assess an administrative penalty against the Respondent for violations of state statutes within the TCEQ'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 \$13,125 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Pursuant to TEX. WATER CODE § 7.067, \$13,125 of the penalty shall be conditionally offset by the Respondent's timely and satisfactory completion of a Supplemental Environmental Project ("SEP") as defined in the attached SEP Agreement ("Attachment A" - incorporated herein by reference). The Respondent's obligation to pay the conditionally offset portion of the penalty shall be discharged upon full compliance with all the terms and conditions of this Order, which includes the timely and satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director.

### III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed a penalty as set forth in Conclusion of Law No. 5 for violations of state statutes and rules of the TCEQ. The payment of this penalty and the Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations that are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Austin, Docket No. 2021-1043-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 the SEP as set forth in Conclusion of Law No. 5. The amount of \$13,125 of the assessed penalty is conditionally offset based on the Respondent's implementation and completion of the SEP pursuant to the terms of the SEP Agreement, as defined in Attachment A. Penalty payments for any portion of the SEP deemed by the Executive Director as not complete shall be paid within 30 days after the date the Executive Director demands payment.
3. Within 30 days after the effective date of this Order, the Respondent shall submit payment for all outstanding assessed fees for TCEQ Financial Administration Account No. 0901057. The payment shall be sent to the address listed in Ordering Provision No. 1.
4. All relief not expressly granted in this Order is denied.
5. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. 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.
7. 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. Extension requests shall be sent to the Enforcement Division at the address listed below:

Enforcement Division, R4  
Texas Commission on Environmental Quality  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. This 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 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.
11. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this 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 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.
12. 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



\_\_\_\_\_  
11/29/2023

\_\_\_\_\_  
For the Executive Director

\_\_\_\_\_  
Date

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

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.

\_\_\_\_\_  
*Shay Ralls Roalson*  
Signature

\_\_\_\_\_  
9/25/2023

\_\_\_\_\_  
Date

\_\_\_\_\_  
Shay Ralls Roalson, P.E.

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
City of Austin

\_\_\_\_\_  
Title

*If mailing address has changed, please check this box and provide the new address below:*

**Instructions:** Send the original, signed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Ordering Provision 1 of this Order.

**Attachment A**  
**Docket Number: 2021-1043-MWD-E**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>City of Austin</b>
<b>Payable Penalty Amount:</b>	<b>\$13,125</b>
<b>SEP Offset Amount:</b>	<b>\$13,125</b>
<b>Type of SEP:</b>	<b>Contribution to a Third-Party Administrator SEP</b>
<b>Third-Party Administrator:</b>	<b>Austin Parks Foundation</b>
<b>Project Name:</b>	<b><i>Barton Creek Greenbelt Restoration</i></b>
<b>Total Project Budget:</b>	<b>\$79,208</b>
<b>Location of SEP:</b>	<b>Travis County</b>

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

**1. Project Description**

**A. Project**

The Respondent shall contribute the SEP Offset Amount to the Third-Party Administrator named above. The contribution will be to the **Austin Parks Foundation** for the *Barton Creek Greenbelt Restoration* project (the “Project”). The Project is to remove invasive woody plants from at least 35 acres of the Barton Creek Greenbelt (“Greenbelt”), a City of Austin-owned parkland preserve. Invasive species removal will allow the opportunity for restoring native hill country/canyon land flora and habitat to the Greenbelt. Removal of sun-blocking invasive species will allow native understory and grass restoration, reducing soil erosion and water pollution of the sensitive karst system. Invasive species to be removed include Ligustrum, Chinaberry, Nandina, Photinia, Chinese Tallow, and Chinese Pistache. The Third-Party Administrator shall create a relational database, interactive website, and interactive GIS map to assist with invasive species removal. The Project will be done in accordance with all federal, state, and local environmental laws and regulations. The contribution will be used in accordance with the SEP Agreement between the Third-Party Administrator and the TCEQ.

All dollars contributed will be used solely for the direct cost of implementing the Project, including, but not limited to supplies, materials, and equipment. Any portion of this contribution that is not spent on the specifically identified SEP may, at the discretion of the Executive Director (“ED”), be applied to another pre-approved SEP.

The Respondent’s signature affixed to this Agreed Order certifies that the Respondent has no prior commitment to make this contribution and that it is being contributed solely to settle this enforcement action. The Respondent shall not profit in any manner from this SEP.

**B. Environmental Benefit**

The Barton Creek Greenbelt contains a Hill Country ecosystem in an urban area. The park offers recreational opportunities and is an ecological resource for protecting the underlying karst

aquifer system, which provides spring flow to support the endangered Barton Springs salamander. Encroachment of dense stands of exotic shrubs and small trees has the potential to overcome the native riparian and canyon forest canopy supporting endangered songbirds. The health of this natural system has become threatened by the dense coverage of invasive Ligustrum and other non-native species. Invasives cause erosion by shading out native plants and ground cover that hold the soil in place. Ground cover also serves as food sources and habitat for native fauna. This Project will combat the ecological degradation caused by invasive species.

### C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to Third-Party Administrator and comply with all other provisions of this SEP.

## 2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to Third-Party Administrator. The Respondent shall make the check payable to **Austin Parks Foundation SEP** and shall mail the contribution with a copy of the Agreed Order to:

Austin Parks Foundation  
Attention: Jayna Burgdorf, CFO  
P.O. Box 6160  
Austin, Texas 78762

## 3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the Enforcement SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to Third-Party Administrator. The Respondent shall mail a copy of the check and transmittal letter to:

Texas Commission on Environmental Quality  
Enforcement Division  
Attention: SEP Coordinator, MC 219  
P.O. Box 13087  
Austin, Texas 78711-3087

## 4. Failure to Fully Perform

If the 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 and 3 above, the ED may require immediate payment of all or part of the SEP Offset Amount.

In the event the ED determines that the Respondent failed to fully implement and complete the Project, the 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, the Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for the reimbursement of a SEP, shall make the check payable to "Texas Commission on Environmental Quality," and shall mail it to:

City of Austin  
Docket No. 2021-1043-MWD-E  
Agreed Order - Attachment A

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

**5. Publicity**

Any public statements concerning this SEP and/or project, made by or on behalf of the 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.

**6. Recognition**

The Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. 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 the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.