

Executive Summary – Enforcement Matter – Case No. 61567

City of Plano

RN101391670

Docket No. 2021-1491-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, 2501 Ridgeview Drive, Plano, Collin County

Type of Operation:

Public water supply

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: April 14, 2023

Comments Received: No

Penalty Information

Total Penalty Assessed: \$18,750

Total Paid to General Revenue: \$18,750

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - Unsatisfactory

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: October 4, 2021

Date(s) of NOE(s): October 18, 2021

Violation Information

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

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Docket No. 2021-1491-WQ-E

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

By September 22, 2021, the Respondent ceased the unauthorized discharge by closing the mainline valve, repairing the line, and collecting and properly disposing of the dead fish.

Technical Requirements:

N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Monica Larina, Enforcement Division, Enforcement Team 1, MC 219, (512) 239-0184; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: The Honorable John Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086-0358

Mark D. Israelson, City Manager, City of Plano, P.O. Box 860358, Plano, Texas 75086-0358

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	18-Oct-2021	Screening	27-Oct-2021	EPA Due	
	PCW	11-Mar-2022				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Plano
Reg. Ent. Ref. No.	RN101391670
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	61567	No. of Violations	1
Docket No.	2021-1491-WQ-E	Order Type	Findings
Media Program(s)	Water Quality	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Monica Larina
		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	\$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.

Compliance History	75.0%	Adjustment	Subtotals 2, 3, & 7	\$9,375
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Notes: Enhancement for two orders without a denial of liability and a 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	-\$3,125
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$0
 Estimated Cost of Compliance: \$5,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$18,750
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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	\$18,750
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$18,750
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DEFERRAL	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.

PAYABLE PENALTY	\$18,750
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Screening Date 27-Oct-2021

Docket No. 2021-1491-WQ-E

PCW

Respondent City of Plano

Policy Revision 5 (January 28, 2021)

Case ID No. 61567

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN101391670

Media Water Quality

Enf. Coordinator Monica Larina

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>)	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	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 (<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) 50%

>> Repeat Violator (Subtotal 3)

Yes

Adjustment Percentage (Subtotal 3) 25%

>> 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 and a Repeat Violator status.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 75%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 75%

Screening Date 27-Oct-2021

Docket No. 2021-1491-WQ-E

PCW

Respondent City of Plano

Policy Revision 5 (January 28, 2021)

Case ID No. 61567

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN101391670

Media Water Quality

Enf. Coordinator Monica Larina

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)(2)

Violation Description

Failed to prevent an unauthorized discharge of other waste into or adjacent to any water in the state. Specifically, on September 22, 2021, a contractor hired by the Respondent broke a 12-inch water main at 700 Klein Road in Plano, Collin County, Texas, resulting in the discharge of approximately 56,628 gallons of potable water into Beck Branch Creek, killing 113 fish.

Base Penalty

\$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent 50.0%

>> 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

\$12,500

\$12,500

Violation Events

Number of Violation Events 1

1 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty

\$12,500

One monthly event is recommended for the day the discharge occurred and ceased on September 22, 2021.

Good Faith Efforts to Comply

25.0%

Reduction

\$3,125

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

Extraordinary		
Ordinary	x	
N/A		

Notes

The Respondent achieved compliance on September 22, 2021.

Violation Subtotal

\$9,375

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

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. 61567
Reg. Ent. Reference No. RN101391670
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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	22-Sep-2021	22-Sep-2021	0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to cease the unauthorized discharge by closing the mainline valve, repairing the line and collecting and properly disposing of the dead fish. The Date Required is the date the unauthorized discharge began, 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

\$5,000

TOTAL

\$0



Compliance History Report

Compliance History Report for CN600352488, RN101391670, Rating Year 2022 which includes Compliance History (CH) components from September 1, 2017, through August 31, 2022.

Customer, Respondent, or Owner/Operator: CN600352488, City of Plano
Classification: SATISFACTORY **Rating:** 12.50

Regulated Entity: RN101391670, CITY OF PLANO PWS
Classification: UNSATISFACTORY **Rating:** 200.00

Complexity Points: 1 **Repeat Violator:** YES

CH Group: 14 - Other

Location: 2501 RIDGEVIEW DRIVE, PLANO, COLLIN COUNTY, TEXAS

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s):
PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0430007 **WATER LICENSING LICENSE** 0430007

Compliance History Period: September 01, 2017 to August 31, 2022 **Rating Year:** 2022 **Rating Date:** 09/01/2022

Date Compliance History Report Prepared: January 09, 2023

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 09, 2018 to January 09, 2023

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

Name: Monica Larina **Phone:** (512) 239-0184

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: 09/07/2018 ADMINORDER 2017-1568-WQ-E (Findings Order-Agreed Order Without Denial)
Classification: Major
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(2)
Description: Failed to prevent the unauthorized discharge of other waste into or adjacent to any water in the state. Specifically, on September 17, 2017, a fire hydrant near 300 Silverglen Drive in Plano, Texas failed and discharged an estimated 358,758 gallons of chlorinated potable water into a collection basin of a White Rock Creek tributary, killing approximately 523 fish. Specifically, during a record review conducted on November 2, 2017, an investigator documented that on October 17, 2017, an 8-inch w
- 2 Effective Date: 08/19/2019 ADMINORDER 2018-1351-WQ-E (Findings Order-Agreed Order Without Denial)
Classification: Major
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(2)
Description: Failure to prevent the unauthorized discharge of pollutants into or adjacent to any waters of the State resulting in a documented serious impact to the environment.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 4 July 16, 2018 (1500467)

Item 6	October 02, 2018	(1518446)
Item 7	November 27, 2018	(1531113)
Item 8	February 27, 2019	(1540600)
Item 9	March 07, 2019	(1550844)
Item 10	October 23, 2020	(1684920)
Item 11	June 03, 2021	(1700369)
Item 12	September 17, 2021	(1762328)
Item 13	November 03, 2021	(1765648)
Item 14	December 22, 2021	(1775091)
Item 15	September 01, 2022	(1840295)

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
ENFORCEMENT ACTION
CONCERNING
CITY OF PLANO
RN101391670

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2021-1491-WQ-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 Plano (the "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 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 public water supply located at 2501 Ridgeview Drive in Plano, Collin County, Texas, with an associated 12-inch water main at 700 Klein Road in Plano, Collin County, Texas (the "Site"). The Site is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. During a record review conducted for the Site on October 4, 2021, an investigator documented that, on September 22, 2021, a contractor hired by the Respondent broke a 12-inch water main at the Site, resulting in the discharge of approximately 56,628 gallons of potable water into Beck Branch Creek, killing 113 fish.
3. The Executive Director recognizes that by September 22, 2021, the Respondent ceased the unauthorized discharge by closing the mainline valve, repairing the line, and collecting and properly disposing of the dead fish.

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 ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, the Respondent failed to prevent an unauthorized discharge of other waste into or adjacent to any water in the state, in violation of TEX. WATER CODE § 26.121(a)(2).
3. 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.
4. An administrative penalty in the amount of \$18,750 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent paid the \$18,750 penalty.

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. 4 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 Plano, Docket No. 2021-1491-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. All relief not expressly granted in this Order is denied.
3. 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 Site operations referenced in this Order.
4. 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.


5. 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.
6. 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.
7. 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.
8. 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.
9. 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



5/15/2023

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.



Signature

February 15, 2023

Date

Mark D. Israelson


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

City Manager

Title

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

APPROVED AS TO FORM:


For Paige Mims, CITY ATTORNEY

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.