

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Jon Niermann, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
*Protecting Texas by Reducing and Preventing Pollution*

August 11, 2016

FIRST CLASS MAIL

Glenn Morrison, City Manager  
The Honorable Dan A. Corbin, Mayor  
City of Killeen  
P.O. Box 1329  
Killeen, Texas 76540-1329

RE: City of Killeen  
TCEQ Docket No. 2013-1545-WQ-E; TCEQ ID No. NONE  
Agreed Order Assessing Administrative Penalties and Requiring Certain Actions

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Texas Commission on Environmental Quality's Enforcement Division at (512) 239-2545 or the Litigation Division at (512) 239-3400. If there are questions pertaining to the mailing of the order, then please contact Leslie Gann of the Office of the Chief Clerk at (512) 239-3319.

Sincerely,

A handwritten signature in cursive script that reads "Bridget C. Bohac".

Bridget C. Bohac  
Chief Clerk

BCB/lg

Enclosure

cc: Claudia Corrales, Enforcement Coordinator, TCEQ Enforcement Division  
Meaghan Bailey, SEP Coordinator, TCEQ Enforcement Division

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AUG 11 2016



OF THE COMMISSION, GIVEN UNDER MY HAND AND THE  
SEAL OF OFFICE ON

*Bridget C. Baker*  
BRIDGET C. BAKER, CHIEF CLERK  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF KILLEEN  
RN103174306

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2013-1545-WQ-E

At its AUG 03 2016 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 Killeen ("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 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 located at 2003 Little Nolan Road, which includes: manhole No. 811MH00438 located behind a residence located at 1901 Wright Way ("Site No. 1"); manhole No. F08MH02134 located behind a business building on the southeast corner of the intersection of East Veterans Memorial

Boulevard and South 2<sup>nd</sup> Street ("Site No. 2"); and manhole No. J07MH05304 located adjacent to a residence at 301 Bauman Drive ("Site No. 3"), in Killeen, Bell County, Texas.

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 May 3, 2013, TCEQ staff documented that the Respondent failed to prevent an unauthorized discharge of wastewater from the collection system into or adjacent to water in the state. Specifically, on May 3, 2013, approximately 2,700 gallons of untreated wastewater discharged from manhole No. 811MH00438 into Long Branch Creek, resulting in the fish kill of approximately 159 fish.
4. During an investigation conducted on July 2, 2013, TCEQ staff documented that the Respondent failed to prevent an unauthorized discharge of wastewater from the collection system into or adjacent to water in the state. Specifically, on July 2, 2013, approximately 9,450 gallons of untreated wastewater discharged from manhole No. F08MH02134 into Nolan Creek, resulting in the fish kill of approximately 2,226 fish.
5. During an investigation conducted on October 2, 2013, TCEQ staff documented that the Respondent failed to prevent an unauthorized discharge of wastewater from the collection system into or adjacent to water in the state. Specifically, from October 1, 2013 to October 2, 2013, approximately 14,400 gallons of untreated wastewater discharged from manhole No. J07MH05304 into an unnamed tributary of Nolan Creek, resulting in the fish kill of approximately 591 fish.
6. The Respondent received notices of the violations on August 12, 2013; September 26, 2013; and December 9, 2013.
7. The Executive Director recognizes that the Respondent has implemented the following corrective measures:
  - a. At Site No. 1:
    - i. By May 3, 2013:
      - (a) The blockage causing the unauthorized discharge was cleared and the discharge ceased; and
      - (b) The dead fish were removed from Long Branch Creek and properly disposed of.
    - ii. By May 4, 2013:
      - (a) Sanitized the affected area; and

- (b) The wastewater discharged into Long Branch Creek was pumped from Long Branch Creek into the Respondent's wastewater collection system and fresh water from an upstream fire hydrant was dechlorinated and pumped into the Creek.
    - iii. By May 9, 2013, a total of 1,266 feet of 10 inch and 12 inch collection system piping upstream and downstream was inspected and cleaned.
  - b. At Site No. 2:
    - i. By July 2, 2013:
      - (a) The blockage at manhole Fo8MH02134 was cleared and the discharge ceased;
      - (b) The dead fish were removed from Nolan Creek and properly disposed of; and
      - (c) Removed wastewater and debris from the ground surrounding manhole Fo8MH02134 and the adjacent concrete flume and sanitized both affected areas with a 10% solution of sodium hypochlorite.
    - ii. By July 5, 2013:
      - (a) Inspected and cleaned a total of 1,780 feet of collection system piping downstream; and
      - (b) Identified a collapsed clay wastewater main downstream of the Site.
    - iii. By July 11, 2013, replaced the collapsed wastewater main with a polyvinyl chloride main.
  - c. At Site No. 3:
    - i. By October 2, 2013:
      - (a) The blockage at manhole Jo7MH05304 was cleared and the discharge ceased;
      - (b) The dead fish were removed from the unnamed tributary and properly disposed of;
      - (c) Removed wastewater and debris from the area surrounding manhole Jo7MH05304 and sanitized the affected area with a 10% solution of sodium hypochlorite; and

- (d) The wastewater discharged into the unnamed tributary was pumped from the tributary into the Respondent's wastewater collection system and fresh water from a nearby fire hydrant was dechlorinated and pumped into the tributary.
- ii. By October 3, 2013, completed the inspection of collection system piping upstream and downstream.

## 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 Nos. 3, 4, and 5, the Respondent failed to prevent unauthorized discharges 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. 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.
4. An administrative penalty in the amount of Thirty-Seven Thousand Eight Hundred Seventy-Five Dollars (\$37,875) 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. Thirty-Seven Thousand Eight Hundred Seventy-Five Dollars (\$37,875) 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 Thirty-Seven Thousand Eight Hundred Seventy-Five Dollars (\$37,875) as set forth in Section II, Paragraph 4 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 Killeen, Docket No. 2013-1545-WQ-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. The Respondent shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section II, Paragraph 4 above, Thirty-Seven Thousand Eight Hundred Seventy-Five Dollars (\$37,875) of the assessed administrative penalty shall be offset with the condition that the Respondent implements the SEP defined in Attachment A, incorporated herein by reference. The Respondent's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. The Respondent shall undertake the following technical requirements for Site No. 2:
  - a. Within 30 days after the effective date of this Agreed Order, update operational guidance and conduct employee training to ensure that at a minimum, the following corrective actions are initiated within 24 hours after becoming aware of an unauthorized discharge of wastewater into or adjacent to water in the state:
    - i. Notify the appropriate state, federal, and local agencies;
    - ii. Identify the cause(s) of the unauthorized discharge and begin taking the appropriate corrective action(s) to cease the unauthorized discharge;
    - iii. Contain, collect, remove, and properly dispose of all wastewater discharged into and adjacent to water in the state and properly remediate the affected areas; and
    - iv. Collect, remove, and properly dispose of any dead aquatic wildlife.
  - b. Within 45 days after the effective date of this Agreed Order:
    - i. Submit written certification of compliance with Ordering Provision No. 3.a, in accordance with Ordering Provision No. 3.c below; and
    - ii. Submit written certification to the addresses listed in Ordering Provision No. 3.c below that all future unauthorized discharges of wastewater into or adjacent to water in the state will be addressed, at a minimum, in accordance with the corrective actions listed under Ordering Provision No. 3.a above. The written certification shall also be notarized by a State of Texas Notary Public and include the certification language in Ordering Provision No. 3.c below.

- c. The written certifications of compliance required by Ordering Provisions Nos. 3.b.i and 3.b.ii shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance, be notarized by a State of Texas Notary Public, and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certifications shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with copies to:

Water Section Manager  
Waco Regional Office  
Texas Commission on Environmental Quality  
6801 Sanger Avenue, Suite 2500  
Waco, Texas 76710-7826

4. 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.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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.
8. 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.
9. 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.
10. 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.
11. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.



### SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw  
For the Commission

8-9-16

Pam Manley  
For the Executive Director

5/26/16  
Date

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

Glenn Morrison  
Signature HC  
890  
Glenn Morrison  
Name (Printed or typed)  
Authorized Representative of  
City of Killeen

8/12/14  
Date  
City Manager  
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: 2013-1545-WQ-E**  
**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

|                           |   |
|---------------------------|---|
| <b>Respondent:</b>        | City of Killeen   |
| <b>Penalty Amount:</b>    | Thirty-Seven Thousand Eight Hundred Seventy-Five Dollars (\$37,875) |
| <b>SEP Offset Amount:</b> | Thirty-Seven Thousand Eight Hundred Seventy-Five Dollars (\$37,875) |
| <b>Type of SEP:</b>       | Custom  |
| <b>Project Name:</b>      | <i>Nolan Creek Erosion Control Project</i>                          |
| <b>Location of SEP:</b>   | Bell County   |

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of 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 bid and hire a contractor to repair erosion to the south bank of Nolan Creek located between 10<sup>th</sup> Street and Veteran’s Memorial Boulevard (Business 190) in Killeen, Bell County, Texas. Contractor shall install gabion baskets along the southern bank of Nolan Creek to stabilize the earthen walls of the creek bed (the “Project”). Any advertisement, including 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. No portion of the SEP Offset Amount shall be spent on administrative costs, including but not limited to operating costs, reporting expenses, handling of expenses, project coordination, liability, or equipment breakdowns.

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

**B. Environmental Benefit**

The SEP will reduce the amount of sediment being released into the creek. Accelerated streambank erosion leads to a disproportionate sediment supply, stream channel

instability, land loss, habitat loss, and other adverse effects. Excess sediment within a watercourse can also reduce the level of oxygen in the water that is supplied to plants and wildlife.

**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**

| <b>Item</b>                                       | <b>Quantity</b> | <b>Cost</b> | <b>Units</b>    | <b>Total</b>    |
|---|-----------------|-------------|-----------------|-----------------|
| Wall: 3' x 3' PVC coated Gabion Basket (in place) | 208             | \$240.00    | Each cubic yard | \$49,920        |
| <b>Total</b>                                      |                 |             |                 | <b>\$49,920</b> |

**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:

| <b>Days from Effective Order Date</b> | <b>Information Required</b>                                      |
|---------------------------------------|--|
| 30                                    | Notice of Commencement describing actions taken to begin project |
| 90                                    | Actions completed during previous 60-day period                  |

| <b>Days from Effective Order Date</b> | <b>Information Required</b>                     |
|---------------------------------------|---|
| 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 for bids (all advertisements must include the statement that “the SEP is being performed as a result of a TCEQ enforcement action”), if applicable;
4. A certified/notarized statement of quantifiable environmental benefit;
5. Detailed map showing specific locations of the erosion site(s);
6. Dated photographs of the Project showing the creek bed walls before, during the construction, and after installation of the gabion baskets;
7. A copy of the engineering plans, specifications, and permit(s); and
8. 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. Clean Texas Program

Respondent shall not include this Project in any application made to TCEQ under the “Clean Texas” (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution 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.