

## Jim Palenick

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**From:** Jim Palenick [jpalenick@dallasnc.net]  
**Sent:** Friday, July 12, 2013 11:26 AM  
**To:** 'rcdc18@charter.net'; 'ronniemorrow@att.net'; 'Martin, Scott'; 'JOHN BEATY'; 'huggybarber@att.net'; 'hoyle withers'  
**Cc:** 'Maria Stroupe'; 'Gary Buckner'; 'Bill Trudnak'; 'Doug Huffman'; 'David Kahler'; 'A Martin'; 'Steve Lambert'; 'J. Thomas Hunn'  
**Subject:** Town Manager's Weekly Report (#38)  
**Attachments:** NOV for March 2013.pdf; Water Sewer Revenues Changes.xlsx; Water Sewer Revenues Worksheet.xlsx

Mayor & Board of Aldermen:

Please accept the following as the **Town Manager's Report for the Week-ended Friday, July 12, 2013.**

- Having now completed the Fiscal-year 2012-13, I have had the opportunity to compile the full-year data for Water & Sewer revenues, and, in turn, compare them to the Fiscal-year 2011-12 (previous year) revenues, in order to see how we actually performed for the first 12-month period following our Rate-restructuring. The resulting matrix of month-by-month data is attached herewith for your review and use. You will see that we had some months (because of decreased usage) where revenues were down, but overall we finished the year producing **\$53,560.44** more in total Revenues following the rate-restructuring, than the 12-month period immediately preceding it. This compares favorably to my estimate (provided as part of the materials used in explaining and advocating for the restructuring) that, assuming equal usage, we would generate **\$39,328.01** more. So, it has proven pretty close to what we expected, given that our overall yearly usage was up less than 2%. These numbers make me more comfortable that our estimates attached to this fiscal-year's rate increase, along with projected future year's increases are accurate and will provide for the debt service coverage we have planned.
- Also attached is the latest correspondence from the North Carolina Department of Environment and Natural Resources consisting of a Notice of Violation (NOV) for the Town's Wastewater Treatment Plants Failure to meet Treatment standards for the Week-ended march 2<sup>nd</sup>, 2013. This violation carries with it Penalties and costs of \$647.44 and follows on the heels of a similar violation in the Month preceding (February), for which we were also fined. Both violations were the result of the same process problem which has been remedied. Further, however, in June, tied to a maintenance problem at the plant, and made worse by all the rain events, another significant violation/failure was reported and is sure to also result in a fine (probably larger). These recurring instances point out the clear need to move forward with the reconstruction of the Gastonia emergency interconnect if at all financially feasible. We will report on the latest violation and associated penalties as soon as we get the NCDENR's official response.
- We are currently working to implement the new Solid waste fees and pick-up restrictions and will be developing brochures, door-cards, mailings, and other public communication devices over the next days and weeks to inform the public of the changes. We will be very lenient over the first few months in enforcement measures and will try primarily to educate rather than to be punitive. We are in the process of getting bids on the new Trash truck and have ordered the new, opaque-yellow ©Dallas-logo trash bags to be used by residents for containment of excess Refuse outside of the Curb-carts. The bags will be sold at Town Hall to begin with and be available at \$1.00 each or a box of 25 for \$22.00.
- Architect Ellen Harris was here on Wednesday and went over all of the design specifications and construction drawings for the Courthouse renovation with myself and the Board –member appointees to the Dallas Historic Courthouse Foundation (Coleman, Huggins, Beaty). With such documents now in hand, we can move forward with bidding the project whenever we feel comfortable that the financing has been finalized.
- Next week I will be completing the required State reports on expenditure of "Powell Bill" Funds, which are the State-returned gas and motor vehicle use taxes which must be used on Street expenditures. As discussed in the Budget review, these funds make up only a small fraction of the total we spend each year on streets, and taken

alone would accomplish little of anything. Nonetheless the State requires us to provide incredibly detailed evidence of not just the use of these funds, but of all funds expended on Streets – somehow concerned that we receive so much that we might be subsidizing non-street programs or projects. I will again reassure them we are not.

Thank You,

Jim Palenick  
Interim Town Manager



North Carolina Department of Environment and Natural Resources

Division of Water Quality

Pat McCrory  
Governor

Thomas A. Reeder  
Acting Director

John E. Skvarla, III  
Secretary

July 10, 2013

**CERTIFIED MAIL 7010 0780 0000 5519 2380**  
**RETURN RECEIPT REQUESTED**

The Honorable Rick Coleman, Mayor  
Town of Dallas  
210 North Holland Street  
Dallas, North Carolina 28034-1625

SUBJECT: Notice of Violation and Assessment of Civil  
Penalty for Violations of N.C. General Statute  
143-215.1(a)(6) and NPDES Permit No. NC0068888  
Dallas WWTP  
Gaston County  
Case No. LV-2013-0134

Dear Mayor Coleman:

This letter transmits a Notice of Violation and assessment of civil penalty in the amount of \$647.44 (\$500.00 civil penalty + \$147.44 enforcement costs) against the Town of Dallas.

This assessment is based upon the following facts: A review has been conducted of the self-monitoring data reported for March 2013. This review has shown the subject facility to be in violation of the discharge limitations found in NPDES Permit No. NC0068888. The violations are summarized in Attachment A to this letter.

Based upon the above facts, I conclude as a matter of law that the Town of Dallas violated the terms, conditions, or requirements of NPDES Permit No. NC0068888 and North Carolina General Statute (G.S.) 143-215.1(a)(6) in the manner and extent shown in Attachment A. A civil penalty may be assessed in accordance with the maximums established by G.S. 143-215.6A(a)(2).

Based upon the above findings of fact and conclusions of law, and in accordance with authority provided by the Secretary of the Department of Environment and Natural Resources and the Director of the Division of Water Quality, I, Michael L. Parker, Surface Water Protection Regional Supervisor for the Mooresville Region, hereby make the following civil penalty assessment against the Town of Dallas:

Mooresville Regional Office  
Location: 610 East Center Ave., Suite 301 Mooresville, NC 28115  
Phone: (704) 663-1699 | Fax: (704) 663-6040 | Customer Service: 1-877-823-6748  
Internet: <http://portal.ncdenr.org/web/wq>

An Equal Opportunity/Affirmative Action Employer - 30% Recycled/10% Post Consumer paper



\$ 250.00

For 1 of the one (1) violation of G.S. 143-215.1(a)(6) and NPDES Permit No. NC0068888, by discharging waste into the waters of the State in violation of the permit weekly average effluent limit for biological oxygen demand (BOD).

\$ 250.00

For 1 of the one (1) violation of G.S. 143-215.1(a)(6) and NPDES Permit No. NC0068888, by discharging waste into the waters of the State in violation of the permit weekly average effluent limit for total suspended solids (TSS).

\$ 500.00

**TOTAL CIVIL PENALTY**

\$ 147.44

Enforcement costs

\$ 647.44

**TOTAL AMOUNT DUE**

Pursuant to G.S. 143-215.6A(c), in determining the amount of the penalty I have taken into account the Findings of Fact and Conclusions of Law and the factors set forth at G.S. 143B-282.1(b), which are:

- (1) The degree and extent of harm to the natural resources of the State, to the public health, or to private property resulting from the violations;
- (2) The duration and gravity of the violations;
- (3) The effect on ground or surface water quantity or quality or on air quality;
- (4) The cost of rectifying the damage;
- (5) The amount of money saved by noncompliance;
- (6) Whether the violations were committed willfully or intentionally;
- (7) The prior record of the violator in complying or failing to comply with programs over which the Environmental Management Commission has regulatory authority; and
- (8) The cost to the State of the enforcement procedures.

Within thirty days of receipt of this notice, you must do one of the following:

**1. Submit payment of the penalty:**

Payment should be made directly to the order of the Department of Environment and Natural Resources (*do not include waiver form*). Payment of the penalty will not foreclose further enforcement action for any continuing or new violation(s). Please submit payment to the attention of:

Point Source Compliance/Enforcement Unit  
Division of Water Quality  
1617 Mail Service Center  
Raleigh, North Carolina 27699-1617

**OR**

**2. Submit a written request for remission including a detailed justification for such request:**

Please be aware that a request for remission is limited to consideration of the five factors listed below as they may relate to the reasonableness of the amount of the penalty assessed. Requesting remission is not the proper procedure for contesting whether the violation(s) occurred or the accuracy of any of the factual statements contained in the civil penalty assessment document. Because a remission request forecloses the option of an administrative hearing, such a request must be accompanied by a waiver of your right to an administrative hearing and a stipulation that no factual or legal issues are in dispute. Please prepare a detailed statement that establishes why you believe the civil penalty should be remitted, and submit it to the Division of Water Quality at the address listed below. In determining whether a remission request will be approved, the following factors shall be considered:

- (1) whether one or more of the civil penalty assessment factors in G.S. 143B-282.1(b) were wrongfully applied to the detriment of the petitioner;
- (2) whether the violator promptly abated continuing environmental damage resulting from the violation;
- (3) whether the violation was inadvertent or a result of an accident;
- (4) whether the violator had been assessed civil penalties for any previous violations; or
- (5) whether payment of the civil penalty will prevent payment for the remaining necessary remedial actions.

Please note that all information presented in support of your request for remission must be submitted in writing. The Director of the Division of Water Quality will review your evidence and inform you of his decision in the matter of your remission request. The response will provide details regarding case status, directions for payment, and provision for further appeal of the penalty to the Environmental Management Commission's Committee on Civil Penalty Remissions (Committee). Please be advised that the Committee cannot consider information that was not part of the original remission request considered by the Director. Therefore, it is very important that you prepare a complete and thorough statement in support of your request for remission.

In order to request remission, you must complete and submit the enclosed "Waiver of Right to an Administrative Hearing and Stipulation of Facts" form within thirty (30) days of receipt of this notice. The Division of Water Quality also requests that you complete and submit the enclosed "Justification for Remission Request." Both forms should be submitted to the following address:

Point Source Compliance/Enforcement Unit  
Division of Water Quality  
1617 Mail Service Center  
Raleigh, North Carolina 27699-1617

**OR**

**3. File a petition for an administrative hearing with the Office of Administrative Hearings:**

If you wish to contest any statement in the attached assessment document you must file a petition for an administrative hearing. You may obtain the petition form from the Office of Administrative Hearings. You must file the petition with the Office of Administrative Hearings within thirty (30) days of receipt of this notice. A petition is considered filed when it is received in the Office of Administrative Hearings during normal office hours. The Office of Administrative Hearings accepts filings Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m., except for official state

holidays. The petition may be filed by facsimile (fax) or electronic mail by an attached file (with restrictions) - provided the signed original, one (1) copy and a filing fee (if a filing fee is required by NCGS §150B-23.2) is received in the Office of Administrative Hearings within seven (7) business days following the faxed or electronic transmission. You should contact the Office of Administrative Hearings with all questions regarding the filing fee and/or the details of the filing process. The mailing address and telephone and fax numbers for the Office of Administrative Hearings are as follows:

Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
Tel: (919) 431-3000; Fax: (919) 431-3100

One (1) copy of the petition must also be served on DENR as follows:


Mr. Lacy Presnell, General Counsel  
DENR  
1601 Mail Service Center  
Raleigh, NC 27699-1601

Please indicate the case number (as found on page one of this letter) on the petition.

Failure to exercise one of the options above within thirty (30) days of receipt of this notice, as evidenced by an internal date/time received stamp (not a postmark), will result in this matter being referred to the Attorney General's Office for collection of the penalty through a civil action.

Please be advised that additional penalties may be assessed for violations that occur after the review period of this assessment. If the violations are of a continuing nature, not related to operation and/or maintenance problems, and you anticipate remedial construction activities, then you may wish to consider applying for a Special Order by Consent. If you have any questions about this civil penalty assessment or a Special Order by Consent, please contact the Water Quality Section staff of the Mooresville Regional Office at (704) 663-1699.

7/10/2013  
(Date)

  
Michael L. Parker, Regional Supervisor  
Surface Water Protection  
Mooresville Regional Office  
Division of Water Quality

#### ATTACHMENTS

cc: Mooresville Regional Office Compliance File w/ attachments  
Raleigh Compliance/Enforcement File w/ attachments  
Central Files w/ attachments

mlp/ma

**ATTACHMENT A**  
**CASE NO. LV-2013-0134**

| <u>Outfall</u> | <u>Date</u>        | <u>Parameter</u> | <u>Reported Value</u> | <u>Permit Limit</u>        |
|----------------|--------------------|------------------|-----------------------|----------------------------|
| 001            | Week ending 3/2/13 | BOD              | 54.3 mg/L†            | 39.0 mg/L (Weekly average) |
| 001            | Week ending 3/2/13 | TSS              | 137.4 mg/L†           | 45.0 mg/L (Weekly average) |

The Town of Dallas did not provide a response to NOV-2013-LV-346 dated June 5, 2013. However, the comments provided on the February 2013 DMR and the Town's response to NOV-2013-LV-0302 (for the monthly TSS violation) were reviewed. Mitigating factors were not found that resulted in a reduced civil penalty amount.

† The BOD and TSS concentrations reported on for February 26-28, 2013 and March 1-2, 2013, occurred in the monitoring week ending March 2, 2013. Therefore, these permit exceedances are considered March 2013 permit limit violations.

STATE OF NORTH CAROLINA  
COUNTY OF GASTON

DEPARTMENT OF ENVIRONMENT  
AND NATURAL RESOURCES

IN THE MATTER OF ASSESSMENT  
OF CIVIL PENALTY AGAINST  
TOWN OF DALLAS

)  
)  
)  
)  
)

WAIVER OF RIGHT TO AN  
ADMINISTRATIVE HEARING AND  
STIPULATION OF FACTS

PERMIT NO. NC0068888

FILE NO. LV-2013-0134

Having been assessed civil penalties totaling **\$647.44** for violation(s) as set forth in the assessment document of the Division of Water Quality dated **July 10, 2013**, the undersigned, desiring to seek remission of the civil penalties, does hereby waive the right to an administrative hearing in the above-stated matter and does stipulate that the facts are as alleged in the assessment document. The undersigned further understands that all evidence presented in support of remission of this civil penalty must be submitted to the Director of the Division of Water Quality within 30 days of receipt of the notice of assessment. No new evidence in support of a remission request will be allowed after 30 days from the receipt of the notice of assessment.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2013

\_\_\_\_\_  
BY

ADDRESS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TELEPHONE

\_\_\_\_\_



## JUSTIFICATION FOR REMISSION REQUEST

DWQ Case Number: LV-2013-0134

Assessed Party: Town of Dallas

County: Gaston

Permit Number: NC0068888

Amount Assessed: \$647.44

Please use this form when requesting remission of this civil penalty. You must also complete the "Request For Remission, Waiver of Right to an Administrative Hearing, and Stipulation of Facts" form to request remission of this civil penalty. You should attach any documents that you believe support your request and are necessary for the Director to consider in evaluating your request for remission. Please be aware that a request for remission is limited to consideration of the five factors listed below as they may relate to the reasonableness of the amount of the civil penalty assessed. Requesting remission is not the proper procedure for contesting whether the violation(s) occurred or the accuracy of any of the factual statements contained in the civil penalty assessment document. Pursuant to N.C.G.S. § 143B-282.1(c), remission of a civil penalty may be granted only when one or more of the following five factors applies. Please check each factor that you believe applies to your case and provide a detailed explanation, including copies of supporting documents, as to why the factor applies (attach additional pages as needed):

- ☐ (a) one or more of the civil penalty assessment factors in N.C.G.S. 143B-282.1(b) were wrongfully applied to the detriment of the petitioner (the assessment factors are listed in the civil penalty assessment document);
- ☐ (b) the violator promptly abated continuing environmental damage resulting from the violation (i.e., explain the steps that you took to correct the violation and prevent future occurrences);
- ☐ (c) the violation was inadvertent or a result of an accident (i.e., explain why the violation was unavoidable or something you could not prevent or prepare for);
- ☐ (d) the violator had not been assessed civil penalties for any previous violations;
- ☐ (e) payment of the civil penalty will prevent payment for the remaining necessary remedial actions (i.e., explain how payment of the civil penalty will prevent you from performing the activities necessary to achieve compliance).

**EXPLANATION:** (use additional pages as necessary)

Revenue Comparison  
Following Implementation of Water/Sewer Rate Restructuring

| Months    | Irrigation<br>2011 | Water    |            |            | Sewer     |           |            | Total      |           | Difference | Cumulative |
|-----------|--------------------|----------|------------|------------|-----------|-----------|------------|------------|-----------|------------|------------|
|           |                    | 2012     | 2011       | 2012       | 2012      | 2011      | 2012       | 2012       | 2011      |            |            |
| August    | 4,200.67           | 3,260.10 | 115,662.63 | 118,791.98 | 56,016.15 | 61,102.71 | 175,879.45 | 183,154.79 | 7,275.34  |            |            |
| September | 3,161.85           | 3,360.07 | 114,714.24 | 107,093.52 | 56,869.22 | 55,287.90 | 174,745.31 | 165,741.49 | -9,003.82 |            |            |
| October   | 2,658.41           | 3,877.91 | 123,012.68 | 119,476.03 | 60,810.21 | 60,368.29 | 186,481.30 | 183,722.23 | -2,759.07 |            |            |
| November  | 1,742.67           | 2,695.94 | 106,250.00 | 113,838.95 | 55,428.05 | 57,428.05 | 163,420.72 | 174,326.10 | 10,905.38 |            |            |
| December  | 1,350.50           | 2,984.95 | 107,024.78 | 111,983.52 | 55,646.81 | 57,741.50 | 164,022.09 | 172,709.97 | 8,687.88  |            |            |
| January   | 729.06             | 1,380.09 | 104,118.85 | 106,859.77 | 54,912.40 | 56,536.05 | 159,760.31 | 164,775.91 | 5,015.60  |            |            |
| February  | 704.95             | 890.37   | 102,105.34 | 103,303.71 | 55,456.30 | 56,567.10 | 158,266.59 | 160,761.18 | 2,494.59  |            | 22,615.90  |
| March     | 714.94             | 826.00   | 99,943.42  | 103,431.38 | 53,097.92 | 56,646.36 | 153,756.28 | 160,903.74 | 7,147.46  |            | 29,763.36  |
| April     | 1,209.34           | 743.77   | 101,977.47 | 97,429.40  | 53,677.67 | 53,331.44 | 156,864.48 | 151,504.61 | -5,359.87 |            | 24,403.49  |
| May       | 1,061.94           | 1,707.22 | 109,917.70 | 106,138.42 | 59,565.21 | 58,491.01 | 170,544.85 | 166,336.65 | -4,208.20 |            | 20,195.29  |
| June      | 1,459.15           | 1,668.73 | 106,288.22 | 111,288.22 | 56,919.53 | 61,690.65 | 164,666.90 | 174,798.28 | 10,131.38 |            | 30,326.67  |
| July      | 2,336.85           | 2,391.99 | 107,887.03 | 121,240.47 | 55,310.52 | 65,135.71 | 165,534.40 | 188,768.17 | 23,233.77 |            | 53,560.44  |

|            | Aug. 2011<br>Usage | Aug. 2012<br>Usage | %<br>Usage<br>Change | %<br>Revenue<br>Change |
|------------|--------------------|--------------------|----------------------|------------------------|
| Irrigation | 694626             | 520868             |                      |                        |
| Water      | 1538587            | 15907477           |                      |                        |
| Sewer      | 9838606            | 10443494           |                      |                        |
| Total      | 25919119           | 26871839           | 3.67%                | 4.13%                  |
|            |                    |                    |                      |                        |
|            | Sep. 2011<br>Usage | Sep. 2012<br>Usage |                      |                        |
| Irrigation | 513808             | 538923             |                      |                        |
| Water      | 15647235           | 13982536           |                      |                        |
| Sewer      | 9986578            | 9176073            |                      |                        |
| Total      | 26147621           | 23697532           | -9.37%               | -5.15%                 |
|            |                    |                    |                      |                        |
|            | Oct. 2011<br>Usage | Oct. 2012<br>Usage |                      |                        |
| Irrigation | 418491             | 626529             |                      |                        |
| Water      | 16671402           | 15413539           |                      |                        |
| Sewer      | 10781234           | 10132992           |                      |                        |
| Total      | 27871127           | 26173060           | -6.09%               | -1.48%                 |
|            |                    |                    |                      |                        |
|            | Nov. 2011<br>Usage | Nov. 2012<br>Usage |                      |                        |
| Irrigation | 256541             | 427611             |                      |                        |
| Water      | 14611351           | 14548351           |                      |                        |
| Sewer      | 9578684            | 9586135            |                      |                        |
| Total      | 24446576           | 24562097           | 0.47%                | 6.67%                  |
|            |                    |                    |                      |                        |
|            | Dec. 2011          | Dec. 2012          |                      |                        |

|            |          |          |
|------------|----------|----------|
|            | Usage    | Usage    |
| Irrigation | 213983   | 473404   |
| Water      | 14244620 | 14572897 |
| Sewer      | 9559743  | 9734746  |
| Total      | 24018346 | 24781047 |

4.00%

6.00%

|            |          |          |
|------------|----------|----------|
|            | Jan.2012 | Jan.2013 |
|            | Usage    | Usage    |
| Irrigation | 62382    | 190157   |
| Water      | 13797252 | 13969421 |
| Sewer      | 9365594  | 9485847  |
| Total      | 23225228 | 23645425 |

2.00%

4.00%

|            |          |          |
|------------|----------|----------|
|            | Feb.2012 | Feb.2013 |
|            | Usage    | Usage    |
| Irrigation | 54610    | 94428    |
| Water      | 14042918 | 13718040 |
| Sewer      | 9615897  | 9528980  |
| Total      | 23713425 | 23341448 |

-1.60%

1.60%

|            |          |          |
|------------|----------|----------|
|            | Mar.2012 | Mar.2013 |
|            | Usage    | Usage    |
| Irrigation | 57547    | 79422    |
| Water      | 13433193 | 13759945 |
| Sewer      | 9101877  | 9621718  |
| Total      | 22592617 | 23461085 |

3.90%

4.70%

|            |          |          |
|------------|----------|----------|
|            | Apr.2012 | Apr.2013 |
|            | Usage    | Usage    |
| Irrigation | 148067   | 65855    |

|       |          |          |        |
|-------|----------|----------|--------|
| Water | 12840127 | 13365773 |        |
| Sewer | 9121832  | 9439560  |        |
| Total | 22110026 | 22871188 | 3.50%  |
|       |          |          | -3.50% |

|            |          |          |        |
|------------|----------|----------|--------|
|            | May-12   | May-13   |        |
|            | Usage    | Usage    |        |
| Irrigation | 126181   | 240533   |        |
| Water      | 1488732  | 13815335 |        |
| Sewer      | 10535460 | 9673474  | -7.20% |
| Total      | 25550373 | 23729342 | -2.50% |

|            |          |          |        |
|------------|----------|----------|--------|
|            | 12-Jun   | 13-Jun   |        |
|            | Usage    | Usage    |        |
| Irrigation | 203931   | 242277   |        |
| Water      | 14400204 | 13864330 |        |
| Sewer      | 9924304  | 9522894  |        |
| Total      | 24528439 | 23629501 | -3.70% |
|            |          |          | 6.20%  |

|            |          |          |        |
|------------|----------|----------|--------|
|            | 12-Jul   | 13-Jul   |        |
|            | Usage    | Usage    |        |
| Irrigation | 364428   | 369395   |        |
| Water      | 14414345 | 16056402 |        |
| Sewer      | 9630320  | 11158001 |        |
| Total      | 24409093 | 27583798 | 13.00% |
|            |          |          | 14.10% |