

# Memorandum



CITY OF DALLAS

**DATE:** November 4, 2011

**TO:** Honorable Mayor Michael S. Rawlings  
Honorable Jerry Allen, Chairman – Budget, Finance & Audit Committee  
Thomas P. Perkins, Jr., City Attorney

**SUBJECT:** Fraud, Waste, and Abuse Allegations:  
Violation of Environmental Protection Agency Consent Decree

Council Resolution 90-4027 requires the Office of the City Auditor (Office) to report to the Mayor, the Chair of the City Council Budget, Finance & Audit Committee, and the City Attorney any apparent violations of law, apparent instances of misfeasance, or nonfeasance by City employees. This memorandum summarizes the results of an investigation of allegations related to City of Dallas' Storm Water Management Program is provided in accordance with the above resolution for any actions that you may deem appropriate.

The Office investigated allegations that Stormwater Management (SWM) may have violated the City of Dallas (City) Consent Decree with the Environmental Protection Agency (EPA) by fraudulently altering a Texas Department of Transportation (TxDOT) construction inspection report. The complainant, a Stormwater inspector, also reported that a TxDOT representative told him there would be trouble for the Storm Water inspector if he issued a Notice of Violation (NOV) on TxDOT project sites. The complainant stated that both of these allegations were reported to SWM; however, SWM did not take any actions to address these issues.

The Office confirmed that a construction inspection report was changed by a manager. The manager wrote on the report that he rescinded the NOV rating that the inspector had issued to TxDOT; however, the manager provided false statements to the Office staff by stating that he had discussed these changes with his immediate supervisor, the inspector that gave the rating, and the inspector's supervisor. The manager resigned two weeks after being interviewed by the Office staff.

City management believes the rating was a judgment call, but was reasonable based on a review of the inspection report and subsequent information provided by TxDOT; however, City management is establishing procedures to require that amended construction inspection reports have documented justifications for any changes and any amended report must be approved by the Senior Program Manager.

A Stormwater inspector provided a signed statement that a TxDOT employee threatened him about issuing a NOV on TxDOT sites. This information was provided to two levels of management above the inspector's direct supervisor and no actions were taken. City

management stated the manager does not recall the events happening as discussed in the investigation report.

During the course of the investigation, the Office received additional allegations from multiple sources claiming that TxDOT has improperly influenced Stormwater management. These allegations include that TxDOT representatives specifically requested that no NOV's be issued on its construction sites and that Stormwater inspectors who issued NOV's were being removed from inspecting sites.

The investigation showed that:

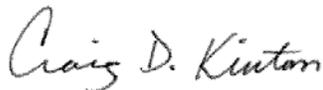
- At least three Stormwater inspectors were reassigned from inspecting any TxDOT sites after they issued a NOV. These inspectors stated TxDOT never wanted inspectors on their sites and thought they had some sort of influence over City Hall.
- From January 2009 through February 2010, ten NOV's were issued on TxDOT sites. After a March 5, 2010 meeting between TxDOT and Stormwater management, the Office determined that only one NOV has been issued on a TxDOT site. In comparison, the number of NOV's increased on other operators' sites.

City management stated that inspectors are routinely rotated to promote training and site evaluation. City management also stated that although there may be an appearance that enforcement efforts were reduced after the March 5, 2010 meeting at City Hall, there is no documentation in the report that states inspection staff was directed (formally or informally) to perform duties any differently after the meeting took place.

City management does not believe they violated the Consent Decree; however, they are providing the EPA with a copy of the City Auditor's Report and City Management's response.

If you have any questions or would like to be briefed on this matter, please contact me at 214-670-3222 or Gary Lewis, Assistant City Auditor, at 214-670-5347.

Sincerely,



Craig D. Kinton  
City Auditor

C: Mary K. Suhm, City Manager  
Jill A. Jordan, P.E., Assistant City Manager  
Kelly High, Director – Trinity Watershed Management