

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NUMBER: 2005-1197-PWS-E TCEQ ID NO: RN101245280 ENF ID: 26070
RESPONDENT NAME: KYLE HICKAM DBA CARTWRIGHT BAR B QUE

ORDER TYPE:

<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> SHUTDOWN ORDER	<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:

<input type="checkbox"/> AGRICULTURE	<input type="checkbox"/> AIR	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE	<input type="checkbox"/> MUNICIPAL SOLID WASTE
<input type="checkbox"/> OCCUPATIONAL CERTIFICATION	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> RADIOACTIVE WASTE
<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL	<input type="checkbox"/> USED OIL
<input type="checkbox"/> USED OIL FILTER	<input type="checkbox"/> WATER QUALITY		

SITE WHERE VIOLATION(S) OCCURRED: 3130 West Whitestone Boulevard, Cedar Park, Travis County

TYPE OF OPERATION: Public water supply

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no previous complaints. There is no record of additional pending enforcement actions regarding this facility.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on October 9, 2006. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Shawn A. Slack, Litigation Division, MC 175, (512) 239-0063; Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

TCEQ Enforcement Coordinator: Ms. Rebecca Clausewitz, Enforcement Division, MC R-13, (210) 403-4012

TCEQ Regional Contact: Mr. Bryan Sinclair, Austin Regional Office, MC R-11, (512) 239-2171

Respondent: Mr. Kyle Hickam, Owner, Cartwright Bar B Que, 3130 West Whitestone Boulevard, Cedar Park, Texas 78613

Respondent's Attorney: Not represented by counsel.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2007 APR 17 PM 4:25
CHIEF CLERKS OFFICE

RESPONDENT'S NAME: KYLE HICKAM DBA CARTWRIGHT BAR B QUE
DOCKET NO.: 2005-1197-PWS-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date(s) of Investigation(s) Relating to this Case: March 1, 2005</p> <p>Date(s) of NOV(s)/NOE(s) Relating to this Case: August 27, 2004; October 1, 2004; November 1, 2004; December 8 and 28, 2004; January 28, 2005; March 3, 2005; April 1, 2005 (NOVs)</p> <p>Background Facts: An EDPRP was filed on June 21, 2005. The Respondent received notice of the EDPRP on or about June 23, 2006. The staff attorney attempted to contact the Respondent twice before filing the EDPRP, but did not receive a return call. The Respondent has not filed an answer or requested a hearing.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PWS:</p> <p>1. Failed to perform routine monthly bacteriological sampling of the public water supply for the months of July, August, September, October, November, and December 2004, and January and February 2005 [30 TEX. ADMIN. CODE § 290.109(c)(2)(A)(i) and TEX. HEALTH & SAFETY CODE § 341.033(d)].</p> <p>2. Failed to provide public notification of the failure to conduct routine bacteriological monitoring during the months of July, August, September, October, November, and December 2004, and January and February 2005 [30 TEX. ADMIN. CODE § 290.122(c)(2)(B)].</p>	<p>Total Assessed: \$2,840</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>Total Due to General Revenue: \$2,840</p> <p>This is a Default Order.</p> <p>The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: N/A</p> <p>Person Compliance History Classification: N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provision(s)</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Immediately, begin collecting monthly samples which are representative of the Facility's water system, according to the Facility's written Sample Siting Plan. 2. Within 135 days, submit written certification, notarized by a State of Texas Notary Public, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

DATES	Assigned	28-Jun-2005	Screening	11-Jul-2005	EPA Due	
	PCW	11-Jul-2005				

RESPONDENT/FACILITY INFORMATION	
Respondent	Kyle Hickam dba Cartwright Bar B Que
Reg. Ent. Ref. No.	RN101245280
Facility/Site Region	11-Austin
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	26070	No. of Violations	1
Docket No.	2005-1197-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Enf. Coordinator	Rebecca Clausewitz
Multi-Media		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,000
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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	42% Enhancement	Subtotals 2, 3, & 7	\$840
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Notes
The Respondent received eight NOV's for the same or similar type of violations and one NOV, dated November 16, 2004, for violations that are dissimilar from the violations in the current enforcement action.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes
The respondent does not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes
The Respondent is not in compliance.

Economic Benefit	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$3,984	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,400	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,840
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount	\$2,840
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,840
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes
No deferral recommended because this is a findings order.

PAYABLE PENALTY	\$2,840
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Screening Date	11-Jul-2005	Docket No.	2005-1197-PWS-E	PCW
Respondent	Kyle Hickam dba Cartwright Bar B Que		<i>Policy Revision 2 (September 2002)</i>	
Case ID No.	26070	<i>PCW Revision May 19, 2005</i>		
Reg. Ent. Reference No.	RN101245280			
Media [Statute]	Public Water Supply			
Enf. Coordinator	Rebecca Clausewitz			

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	8	40%
	Other written NOVs	1	2%
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	0	0%
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 judgements 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%
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</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%

Please Enter Yes or No

Adjustment Percentage (Subtotal 2) 42%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent received eight NOVs for the same or similar type of violations and one NOV, dated November 16, 2004, for violations that are dissimilar from the violations in the current enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 42%

Screening Date	11-Jul-2005	Docket No.	2005-1197-PWS-E	PCW
Respondent	Kyle Hickam dba Cartwright Bar B Que		<i>Policy Revision 2 (September 2002)</i>	
Case ID No.	26070		<i>PCW Revision May 19, 2005</i>	
Reg. Ent. Reference No.	RN101245280			
Media [Statute]	Public Water Supply			
Enf. Coordinator	Rebecca Clausewitz			
Violation Number	1			
Primary Rule Cite(s)	30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B)			
Secondary Rule Cite(s)	Tex. Health & Safety Code § 341.033(d)			
Violation Description	Failure to collect and submit routine monthly bacteriological samples and failure to provide public notification of the failure to conduct monthly sampling for the months of July, August, September, October, November, and December 2004 and January and February 2005.			
Base Penalty				\$1,000

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

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent <input type="text" value="25%"/>
	Potential	X			

>> **Programmatic Matrix**

		Falsification	Major	Moderate	Minor	
						Percent <input type="text"/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	daily	<input type="text"/>
	monthly	X
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

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 Kyle Hickam dba Cartwright Bar B Que
 Case ID No. 26070
 Reg. Ent. Reference No. RN101245280
 Media [Statute] Public Water Supply
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

There are no delayed costs associated with this violation.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$2,400	31-Jul-2004	28-Feb-2006	1.6	\$190	\$3,794	\$3,984
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided costs include the amount to annually collect and submit water samples for bacteriological analysis and to provide public notice of sampling deficiencies, calculated from the date the first sample should have been submitted to the estimated date of compliance.

Approx. Cost of Compliance **\$2,400**

TOTAL \$3,984

Compliance History

Customer/Respondent/Owner-Operator: CN602667982 HICKAM, KYLE Classification: N/A Rating: 0.000
Regulated Entity: RN101245280 CARTWRIGHT BAR B QUE Classification: N/A Site Rating: 0.00
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2270257
Location: 3130 W WHITESTONE BLVD, TRAVIS COUNTY, TX, 78613
TCEQ Region: REGION 11 - AUSTIN
Date Compliance History Prepared: July 11, 2005
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 11, 2000 to July 11, 2005

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Rebecca Clausewitz Phone: (210) 403-4012

Site Compliance History Components

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 of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

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

03/03/2005 (379485)
01/28/2005 (379481)
09/27/2004 (335723)
06/23/2005 (394398)
08/27/2004 (378598)
10/01/2004 (379455)
12/28/2004 (379472)
11/01/2004 (379461)
11/16/2004 (338954)
12/08/2004 (379466)
04/01/2005 (379526)

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

Date: 12/28/2004 (379472)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)

Description: FAILURE TO COLLECT A ROUTINE MONITORING SAMPLE IN 11/2004.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: FAILURE TO POST PN FOR NOT COLLECTING A ROUTINE MONITORING SAMPLE IN 11/2004.

Date: 12/08/2004 (379466)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: FAILURE TO COLLECT A ROUTINE MONITORING SAMPLE IN 10/2004.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: FAILURE TO POST PN FOR NOT COLLECTING A ROUTINE MONITORING SAMPLE IN 10/2004.

Date: 08/27/2004 (378598)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: FAILURE TO COLLECT A ROUTINE MONITORING SAMPLE IN 07/2004.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: FAILURE TO POST PN FOR NOT COLLECTING A ROUTINE MONITORING SAMPLE IN 07/2004.

Date: 10/01/2004 (379455)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: FAILURE TO COLLECT A ROUTINE MONITORING SAMPLE IN 08/2004.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: FAILURE TO POST PN FOR NOT COLLECTING A ROUTINE MONITORING SAMPLE IN 08/2004.

Date: 01/28/2005 (379481)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: FAILURE TO COLLECT A ROUTINE MONITORING SAMPLE IN 12/2004.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: FAILURE TO POST PN FOR NOT COLLECTING A ROUTINE MONITORING SAMPLE IN 12/2004.

Date: 03/03/2005 (379485)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: FAILURE TO COLLECT A ROUTINE MONITORING SAMPLE IN 01/2005.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: FAILURE TO POST PN FOR NOT COLLECTING A ROUTINE MONITORING SAMPLE IN 01/2005.

Date: 11/01/2004 (379461)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: FAILURE TO POST PN FOR NOT COLLECTING A ROUTINE MONITORING SAMPLE IN 09/2004.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: FAILURE TO COLLECT A ROUTINE MONITORING SAMPLE IN 09/2004.

Date: 11/16/2004 (338954)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter F 290.110(b)(4)
Description: Failure to maintain a chlorine residual of at least 0.2 mg/L free chlorine. It was indicated at the time of the investigation that the water is softened after chlorination, which has been known to decrease the chlorine residual of disinfected water.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(5)(A)
Description: Failure to monitor the disinfectant residual at least once every seven days. At the time of investigation, the disinfectant residual was not being tested or recorded at all.

Date: 04/01/2005 (379526)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: FAILURE TO COLLECT A ROUTINE MONITORING SAMPLE IN 02/2005.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: FAILURE TO POST PN FOR NOT COLLECTING A ROUTINE MONITORING SAMPLE IN 02/2005.

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.

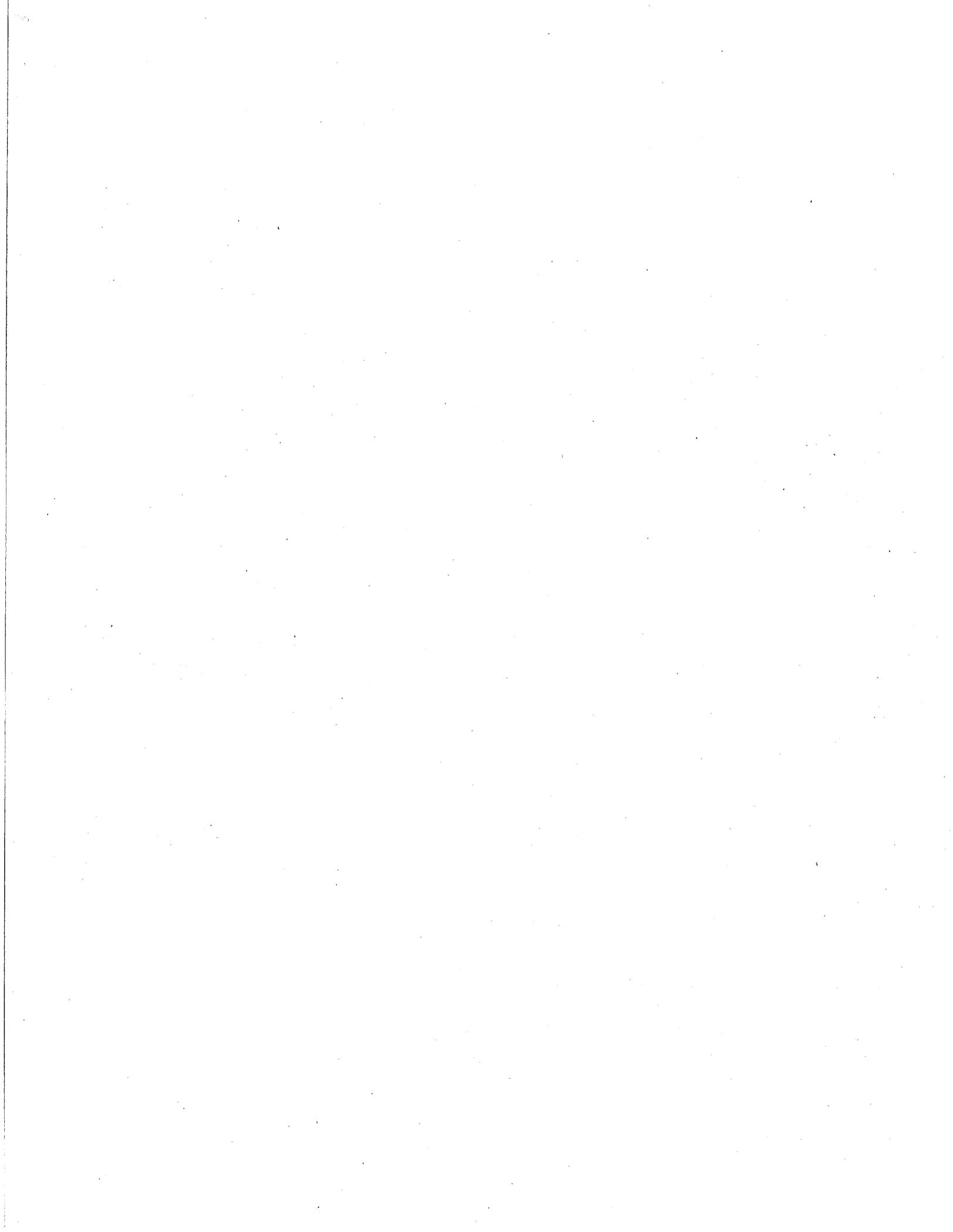
N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
KYLE HICKAM DBA
CARTWRIGHT BAR B QUE;
RN101245280**

§
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§
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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2005-1197-PWS-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Kyle Hickam dba Cartwright Bar B Que ("Mr. Hickam").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Hickam owns and operates a public water supply located at 3130 West Whitestone Boulevard, Cedar Park, Travis County, Texas (the "Facility").
2. The Facility has 2 service connections and serves at least 25 people per day for at least 60 days per year.
3. During an inspection conducted on March 1, 2005, a TCEQ Central Office investigator documented that Mr. Hickam:
 - a. Failed to perform routine monthly bacteriological sampling of the public water supply for the months of July, August, September, October, November, and December 2004, and January and February 2005.
 - b. Failed to provide public notification of the failure to conduct routine bacteriological monitoring during the months of July, August, September, October, November, and December 2004, and January and February 2005.

4. Mr. Hickam received notice of the violations on or about August 31, 2005.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Kyle Hickam dba Cartwright Bar B Que" (the "EDPRP") in the TCEQ Chief Clerk's office on June 21, 2006.
6. By letter dated June 21, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Hickam with notice of the EDPRP. According to the return receipt "green card," Mr. Hickam received notice of the EDPRP on June 23, 2006, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Hickam received notice of the EDPRP, provided by the Executive Director. Mr. Hickam failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Hickam is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Hickam failed to perform routine monthly bacteriological sampling of the public water supply for the months of July, August, September, October, November, and December 2004, and January and February 2005, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(2)(A)(i) and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. As evidenced by Finding of Fact No. 3.b., Mr. Hickam failed to provide public notification of the failure to conduct routine bacteriological monitoring during the months of July, August, September, October, November, and December 2004, and January and February 2005, in violation of 30 TEX. ADMIN. CODE § 290.122(c)(2)(B).
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Mr. Hickam with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 7, Mr. Hickam has failed to file a timely answer to the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE

§ 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Hickam and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Mr. Hickam 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.
7. An administrative penalty in the amount of two thousand eight hundred forty dollars (\$2,840.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Mr. Hickam is assessed an administrative penalty in the amount of two thousand eight hundred forty dollars (\$2,840.00) for violations of TEX. HEALTH & SAFETY CODE ch. 341 and rules of the TCEQ. The payment of this administrative penalty and Mr. Hickam's compliance with all the terms and conditions set forth in this Order completely resolve 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 other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Kyle Hickam dba Cartwright Bar B Que; Docket No. 2005-1197-PWS-E" to:

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

2. Mr. Hickam shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Hickam shall begin collecting monthly samples which are representative of the Facility's water system, according to the Facility's written Sample Siting Plan, as required by 30 TEX. ADMIN. CODE § 290.109.
 - b. Within 135 days after the effective date of this Order, Mr. Hickam shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

The certification shall be submitted to:

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

and

Carolyn Runyon, Water Section Manager
Texas Commission on Environmental Quality
Austin Regional Office
1921 Cedar Bend Dr., Ste 150
Austin, Texas 78758-3795

3. All relief not expressly granted in this Order is denied.

4. The provisions of this Order shall apply to and be binding upon Mr. Hickam. Mr. Hickam is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. 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 Mr. Hickam shall be made in writing to the Executive Director. Extensions are not effective until Mr. Hickam receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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 Mr. Hickam if the Executive Director determines that Mr. Hickam has not complied with one or more of the terms or conditions in this Order.
7. 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.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Kyle Hickam dba Cartwright Bar B Que
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF SHAWN A. SLACK

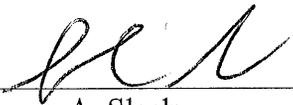
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Shawn A. Slack. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Kyle Hickam dba Cartwright Bar B Que” (the “EDPRP”) with the Office of the Chief Clerk on June 21, 2006.

I sent the EDPRP to Mr. Hickam at his last known address on June 21, 2006, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Hickam received notice of the EDPRP on June 23, 2006, as evidenced by the signature on the card.

More than 20 days have elapsed since Mr. Hickam received notice of the EDPRP. Mr. Hickam failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



Shawn A. Slack
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Shawn A. Slack, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 11th day of August, A.D., 2006.

Notary Stamp  JACQUELINE FRANCES DUCKWORTH
Notary Public, State of Texas
My Commission Expires MARCH 07, 2007
Notary without Bond