

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-1101-PWS-E TCEQ ID NO.: RN101383636 ENF CASE NO.: 30547

RESPONDENT NAME: CITY OF CROWELL

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

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

SITE WHERE VIOLATION(S) OCCURRED: 101 East California Street, Crowell, Foard County

TYPE OF OPERATION: Public water system

SMALL BUSINESS: Yes No

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

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 April 23, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Dinniah M. Chahin, Litigation Division, MC 175, (512) 239-0617
 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

TCEQ Enforcement Coordinator: Mr. Epifanio Villarreal, Enforcement Division, Section I, MC R-13, (210) 403-4033

TCEQ Regional Contact: Mr. James Beauchamp, Abilene Regional Office, MC R-3, (325) 698-6115

Respondent: The Honorable Robert Kincaid, Mayor of City of Crowell, P.O. Box 250, Crowell, Texas 79227

Respondent's Attorney: Mr. Marshall Capps, Attorney, P.O. Box 757, Crowell, Texas 79227

CHIEF CLERKS OFFICE

2007 JUN 19 PM 4: 20

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" 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: December 1, 2005 and August 1, 2006</p> <p>Date(s) of NOV(s)/NOE(s) Relating to this Case: October 10, 2005, December 6, 2005 (NOVs), June 28, 2006 (NOE) July 13, 2006 (NOV) and August 8, 2006 (NOE)</p> <p>Background Facts: A settlement agreement was reached with the Respondent on January 24, 2007, and a signed Agreed Order was received on February 8, 2007.</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) Exceeded the MCL for total coliform bacteria in October 2005 [30 TEX. ADMIN. CODE § 290.109(f)(3) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].</p> <p>2) Exceeded the AMCL for fecal coliform and Escherichia coli bacteria in November 2005 [30 TEX. ADMIN. CODE § 290.109(f)(1)(A) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].</p> <p>3) Exceeded the MCL for total coliform bacteria in July 2006 [30 TEX. ADMIN. CODE § 290.109(f)(3) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].</p>	<p>Total Assessed: \$1,370</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Settlement</p> <p><input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,370</p> <p>The Respondent has paid \$1,370 of the administrative penalty in full.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input type="checkbox"/> Avg. <input type="checkbox"/> Poor <input checked="" type="checkbox"/> N/A</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p>Major Source: Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Order Justification: People have been exposed to pollutants which exceed levels that are protective.</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1) Within 10 days, certify compliance with maximum contaminant levels for total coliform, fecal coliform, and Escherichia coli bacteria.</p> <p>2) Within 15 days, submit written notarized certification that includes detailed supporting documentation including receipts, and/or other records to demonstrate compliance with the Ordering Provision above.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	17-Jul-2006	Screening	31-Jul-2006	EPA Due	01-Sep-2006
	PCW	15-Aug-2006				

RESPONDENT/FACILITY INFORMATION			
Respondent	City of Crowell		
Reg. Ent. Ref. No.	RN101383636		
Facility/Site Region	3-Abilene	Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	30547	No. of Violations	3
Docket No.	2006-1101-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Enf. Coordinator	Epifanio Villarreal
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	\$1,000
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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	37% Enhancement	Subtotal 2, 3, & 7	\$370
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Notes: The penalty enhancement is due to three prior Notices of Violation ("NOVs") for violations that are the same as or similar to the violations in the current enforcement action, one prior dissimilar NOV, and one prior administrative order that contained a denial of liability.

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

Economic Benefit	0% Enhancement	Subtotal 6	\$0
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Total EB Amounts	\$620	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$600	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,370
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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 \$1,370

STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty	\$1,370
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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 offered for a findings order.

PAYABLE PENALTY		\$1,370
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Screening Date	31-Jul-2006	Docket No.	2006-1101-PWS-E	PCW
Respondent	City of Crowell			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	30547			<i>PCW Revision May 19, 2005</i>
Reg. Ent. Reference No.	RN101383636			
Media (Statute)	Public Water Supply			
Ent. Coordinator	Epifanio Villarreal			

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>)	3	15%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	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	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	<i>Please Enter Yes or No</i> 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) 37%

>> Repeat Violator (Subtotal 3)

N/A **Adjustment Percentage (Subtotal 3) 0%**

>> Compliance History/ Person Classification (Subtotal 7)

Average Performer **Adjustment Percentage (Subtotal 7) 0%**

>> Compliance History Summary

Compliance History Notes

The penalty enhancement is due to three prior Notices of Violation ("NOVs") for violations that are the same as or similar to the violations in the current enforcement action, one prior dissimilar NOV, and one prior administrative order that contained a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 37%

Screening Date 31-Jul-2006

Docket No. 2006-1101-PWS-E

PCW

Respondent City of Crowell

Policy Revision 2 (September 2002)

Case ID No. 30547

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101383636

Media [Statute] Public Water Supply

Enf. Coordinator Epifanio Villarreal

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 290.109(f)(3)

Secondary Rule Cite(s) Tex. Health & Safety Code § 341.0315(o)

Violation Description Exceeded the Maximum Contaminant Level ("MCL") for total coliform bacteria in October 2005.

Base Penalty \$1,000

Environmental, Property and Human Health Matrix

		Harm			Percent
		Major	Moderate	Minor	
OR	Release		X		
	Actual		X		
	Potential				

Percent 25%

Programmatic Matrix

		Major	Moderate	Minor
	Falsification			

Percent

Matrix Notes

Customers of the water supply have been exposed to significant amount of contaminants which do not exceed levels that are protective of human health as a result of the violation.

Adjustment -\$750

Base Penalty Subtotal \$250

Violation Events

Number of Violation Events 1

mark only one use a small x

daily	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$250

One monthly event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$210

Violation Final Penalty Total \$343

This violation Final Assessed Penalty (adjusted for limits) \$343

Economic Benefit Worksheet

Respondent: City of Crowell
 Case ID No: 30547
 Reg. Ent. Reference No: RN101383636
 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							

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				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$200	01-Oct-2005	31-Oct-2005	1.0	\$10	\$200	\$210
Other (as needed)				0.0	\$0	\$0	\$0
Notes for AVOIDED costs Estimated costs include the amount for additional sampling and oversight which could have prevented the MCL exceedance, calculated for the month in which the exceedance occurred.							

Approx. Cost of Compliance

TOTAL

Screening Date	31-Jul-2006	Docket No.	2006-1101-PWS-E	PCW
Respondent	City of Crowell	Policy Revision 2 (September 2002)		
Case ID No.	30547	PCW Revision May 19, 2005		
Reg. Ent. Reference No.	RN101383636			
Media (Statute)	Public Water Supply			
Enf. Coordinator	Epifanio Villarreal			
Violation Number	2			
Primary Rule Cite(s)	30 Tex. Admin. Code § 290.109(f)(1)(A)			
Secondary Rule Cite(s)	Tex. Health & Safety Code §.341.0315(c)			
Violation Description	Exceeded the Acute Maximum Contaminant Level ("AMCL") for fecal coliform and Escherichia coli bacteria in November 2005.			
Base Penalty	\$1,000			

>> Environmental, Property, and Human Health Matrix

		Harm			
Release	Major	Moderate	Minor		
Actual	X			Percent	50%
Potential					

>> Programmatic Matrix

		Falsification	Major	Moderate	Minor	Percent	
Matrix Notes	Customers of the public water system have been exposed to contaminants which exceed levels that are protective of human health.						
		Adjustment		-\$500			

Base Penalty Subtotal \$500

Violation Events

Number of Violation Events 1

mark only one use a small x	daily		Violation Base Penalty \$500
	monthly	X	
	quarterly		
	semiannual		
	annual		
	single event		

One monthly event is recommended.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount	\$200	Violation Final Penalty Total	\$685
This violation Final Assessed Penalty (adjusted for limits)		\$685	

Economic Benefit Worksheet

Respondent: City of Crowell
 Case ID No: 30547
 Reg. Ent. Reference No: RN101383636
 Media/Statute: Public Water Supply
 Violation No: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	IEB 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

Avoided Costs	ANNUALIZE (if 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				0.0	\$0	\$0	\$0
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)	\$200	01-Nov-2005	30-Nov-2005	0.0	\$0	\$200	\$200

Notes for AVOIDED costs

Estimated costs include the amount for additional sampling and oversight which could have prevented the AMCL exceedance, calculated for the month in which the exceedance occurred.

Approx. Cost of Compliance \$200

TOTAL \$200

PCW

Screening Date 31-Jul-2006

Docket No: 2006-1101-PWS-E

Policy Revision 2 (September 2002)

Respondent City of Crowell

PCW Revision May 19, 2005

Case ID No: 30547

Reg. Ent. Reference No: RN101383636

Media [Statute] Public Water Supply

Enf. Coordinator Epifanio Villarreal

Violation Number 3

Primary Rule Cite(s) 30 Tex. Admin. Code § 290.109(f)(3)

Secondary Rule Cite(s) Tex. Health & Safety Code § 341.0315(c)

Violation Description Exceeded the Maximum Contaminant Level ("MCL") for total coliform bacteria in July 2006.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		.X	
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes Customers of the water supply have been exposed to significant amount of contaminants which do not exceed levels that are protective of human health as a result of the violation.

Adjustment -\$750

Base Penalty Subtotal \$250

Violation Events

Number of Violation Events 1

mark only one
use a small x

daily	
monthly	X
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$250

One monthly event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$210

Violation Final Penalty Total \$343

This violation Final Assessed Penalty (adjusted for limits) \$343

Economic Benefit Worksheet

Respondent: City of Crowell
 Case ID No: 30547
 Reg. Ent. Reference No: RN101383636
 Media/Statute: Public Water Supply
 Violation No: 3

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							

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				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$200	01-Jul-2006	31-Jul-2006	1.0	\$10	\$200	\$210
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs: Estimated costs include the amount for additional sampling and oversight which could have prevented the MCL exceedance, calculated for the month in which the exceedance occurred.

Approx. Cost of Compliance \$200
TOTAL \$210

08/08/2006 (497176)
10/10/2005 (484823)
08/08/2006 (497193)

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

Date: 10/10/2005 (484823)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)

5A THC Chapter 341, SubChapter A 341.0315(c)

Description: Exceeded a Maximum Contaminant Level (MCL) Violation in 10/2005.

Date: 07/13/2006 (497176)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)

5A THC Chapter 341, SubChapter A 341.0315(c)

Description: Exceeded a Maximum Contaminant Level (MCL) Violation in 07/2006.

Date: 12/06/2005 (485089)

Self Report? NO

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(1)(A)

5A THC Chapter 341, SubChapter A 341.0315(c)

Description: Exceeded an Acute Maximum Contaminant Level (AMCL) Violation in 11/2005.

Date: 12/21/2004 (345095)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.45(f)(3)

Description: FAILURE TO PROVIDE ADEQUATE PURCHASE WATER CONTRACT

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)

Description: FAILURE TO CONDUCT TANK INSPECTIONS

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(8)

Description: FAILURE TO MAINTAIN PAINTED SURFACES ON WATER STORAGE FACILITIES

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(1)

Description: FAILURE TO MAINTAIN LADDER ON WATER STORAGE FACILITIES

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(4)

Description: FAILURE TO MAINTAIN WATER LEVEL INDICATOR ON WATER STORAGE FACILITIES

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(3)

Description: FAILURE TO MAINTAIN OVERFLOW ON WATER STORAGE FACILITIES

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter F 290.121(c)(3)

Description: FAILURE TO COMPLETE SYSTEM MONITORING PLAN

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(i)

Description: FAILURE TO PROVIDE ADEQUATE PLUMBING ORDINANCE

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.44(h)(4)(A)(I)

Description: FAILURE TO TEST BACKFLOW PREVENTION DEVICES FOR 2004

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 CROWELL,
RN101383636

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CHIEF CLERK'S OFFICE

2007 JUN 19 PM 4:21

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

AGREED ORDER
DOCKET NO. 2006-1101-PWS-E

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Crowell ("the City") under the authority of TEX. HEALTH & SAFETY CODE ch. 341 and 30 TEX. ADMIN. CODE ch. 290. The Executive Director of the TCEQ, represented by the Litigation Division, and the City represented by attorney Marshall Capps, presented this agreement to the Commission.

The City 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 City agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement 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 City.

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

FINDINGS OF FACT

1. The City owns and operates a public water system located at 101 East California Street, Crowell, Foard County, Texas (the "Facility") that has 560 service connections and serves at least 25 people per day for at least 60 days per year.

2. During a record review conducted on December 1, 2005, a TCEQ Central Office investigator documented that the City exceeded the Maximum Contaminant Level ("MCL") for total coliform bacteria in October 2005.
3. During a record review conducted on December 1, 2005, a TCEQ Central Office investigator documented that the City exceeded the Acute Maximum Contaminant Level ("AMCL") for fecal coliform and Escherichia coli bacteria in November 2005.
4. During a record review conducted on August 1, 2006, a TCEQ Central Office investigator documented that the City exceeded the MCL for total coliform bacteria in July 2006.
5. The City received notice of the violations on or about August 13, 2006.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1 the City 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. 2, the City exceeded the MCL for total coliform bacteria in October 2005, in violation of 30 TEX. ADMIN. CODE § 290.109(f)(3) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
3. As evidenced by Finding of Fact No. 3, the City exceeded the AMCL for fecal coliform and Escherichia coli bacteria in November 2005, in violation of 30 TEX. ADMIN. CODE § 290.109(f)(1)(A) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
4. As evidenced by Finding of Fact No. 4, the City exceeded the MCL for total coliform bacteria in July 2006, in violation of 30 TEX. ADMIN. CODE § 290.109(f)(3) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
5. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the City for violations of TEX. HEALTH & SAFETY CODE, TCEQ rules, and orders adopted under the Code.
6. An administrative penalty in the amount of one thousand three hundred seventy dollars (\$1,370.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The City has paid one thousand three hundred seventy dollars (\$1,370.00) of the administrative penalty.

ORDERING PROVISIONS

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

1. The City is assessed an administrative penalty in the amount of one thousand three hundred seventy dollars (\$1,370.00) as set forth in Conclusion of Law No. 6 for violations of TEX. HEALTH & SAFETY CODE ch. 341. The payment of this administrative penalty and the City'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 sent with the notation "Re: City of Crowell; Docket No. 2006-1101-PWS-E; Enforcement ID No. 30547" to:

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

2. The City shall undertake the following technical requirements:
 - a. Within 10 days after the effective date of this Agreed Order, certify compliance with maximum contaminant levels for total coliform, fecal coliform, and Escherichia coli bacteria, in accordance with 30 TEX. ADMIN. CODE §§ 290.109(f)(1)(A) and 290.109(f)(3);
 - b. Within 15 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including receipts, and/or other records to demonstrate compliance with Ordering Provision 2.a.

The certification shall be notarized by a State of Texas Notary Public and should 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

with a copy to:

James Beauchamp, Water Section Manager
Abilene Regional Office
Texas Commission on Environmental Quality
1977 Industrial Boulevard
Abilene, Texas 79602-7833

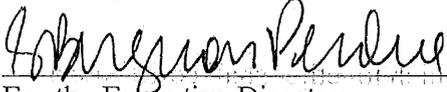
3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any 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 City shall be made in writing to the Executive Director. Extensions are not effective until the City 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 refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the City if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
6. This Agreed Order shall terminate five years from its effective date or upon compliance with all terms and conditions set forth in this Agreed Order, whichever is later.

7. This Agreed Order, issued by the Commission, shall not be admissible against the City 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 the TEX. WATER CODE or the TEX. HEALTH & SAFETY CODE.
8. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



4/29/07

For the Executive Director

Date

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

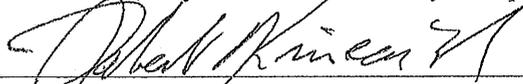
I understand that by entering into this Agreed Order, the City of Crowell waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. 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, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



04-03-07

Signature

Date

ROBERT KINCAID

Mayor

Name (printed or typed)

Title

Authorized Representative

City of Crowell