

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2008-0528-PWS-E **TCEQ ID:** RN101408953 **CASE NO.:** 17752

**RESPONDENT NAME:** City of Kirvin

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> City of Kirvin, 100 Main Street, Kirvin, Freestone County</p> <p><b>TYPE OF OPERATION:</b> Municipal public water system</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on September 1, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Rebecca Clausewitz, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4012; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> Mr. Ken Sessions, Water System Manager, City of Kirvin, P.O. Box 344, Kirvin, Texas 75848  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> January 17, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> February 28, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WATER</b></p> <p>1) Failure to provide a minimum well capacity of 0.6 gallons per minute ("gpm") per connection [30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(i), TEX. HEALTH &amp; SAFETY CODE § 341.0315(c), and TCEQ Agreed Order Docket No. 2004-1100-PWS-E, Ordering Provision 2.d.].</p> <p>2) Failure to maintain the service pump discharge line in a watertight condition [30 TEX. ADMIN. CODE § 290.46(m)(4)].</p> <p>3) Failure to maintain all customer service inspection certificates so that they can be made available for Commission review at the time of the investigation [30 TEX. ADMIN. CODE § 290.46(f)(2) and (f)(3)(E)(iv)].</p> <p>4) Failure to provide a thorough and up-to-date plant operations manual [30 TEX. ADMIN. CODE § 290.42(l)].</p> <p>5) Failure to calibrate the well meter on Well Nos. 1 and 3 at least once every three years [30 TEX. ADMIN. CODE § 290.46(s)(1)].</p> <p>6) Failure to have a sanitary control easement that covers the land within 150 feet of Well No. 3 [30 TEX. ADMIN. CODE § 290.41(c)(1)(F)].</p>	<p><b>Total Assessed:</b> \$3,114</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$3,114</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Orders Justification:</b> This is a Findings Order because the case involves a violation of a prior Agreed Order. When the Respondent failed to comply with the prior Agreed Order, the Respondent demonstrated an indifference to legal duty.</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. On January 30, 2008, the Respondent repaired the leak on the service pump discharge line at the Farm-to-Market Road 27 storage plant; and</p> <p>b. On February 25, 2008, the Respondent inspected the interior of the Pressure Tank No. 1.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, begin maintaining copies of all customer service inspection certificates at the Facility so that they may be made available at the time of investigations.</p> <p>b. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Create and begin maintaining a thorough plant operations manual for the Facility;</p> <p>ii. Calibrate the well meter on Well Nos. 1 and 3;</p> <p>iii. Conduct an inspection of the interior of Pressure Tank No. 2; and</p> <p>iv. Obtain and begin maintaining on file the well completion data for Well No. 1, including the well material setting data, geological log, sealing information, disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well.</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation along with photographs, receipts, and/or other records to demonstrate compliance with Ordering</p>

<p>7) Failure to inspect the interior of the Facility's two pressure tanks at least once every five years [30 TEX. ADMIN. CODE § 290.46(m)(1)(B)].</p> <p>8) Failure to maintain the well completion data for Well No. 1 [30 TEX. ADMIN. CODE § 290.46(n)(3)].</p>		<p>Provisions a. and b.</p> <p>d. Within 90 days after the effective date of this Agreed Order:</p> <p>i. Obtain a sanitary control easement that covers the land within 150 feet of Well No. 3; and</p> <p>ii. Provide a minimum well capacity of 0.6 gpm per connection.</p> <p>e. Within 105 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation along with photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision d.</p>
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Additional ID No(s): PWS ID No. 0810019





# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

DATES	Assigned	2-Mar-2008		
	PCW	26-Mar-2008	Screening	26-Mar-2008
		EPA Due		

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	City of Kirvin		
Reg. Ent. Ref. No.	RN101408953		
Facility/Site Region	9-Waco	Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	17752	No. of Violations	8
Docket No.	2008-0528-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

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History**  Enhancement Subtotals 2, 3, & 7

Notes: The compliance history enhancement is due to two prior Notices of Violation ("NOVs") containing violations that are dissimilar to the violations in the current enforcement action and one prior Agreed Order containing a denial of liability.

**Culpability**   Enhancement Subtotal 4

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply**  Reduction Subtotal 5

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	X	(mark with x)

Notes: The Respondent does not meet the good faith criteria.

**Total EB Amounts**  Subtotal 6   
 Approx. Cost of Compliance  \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  Adjustment Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: An enhancement is recommended for recovery of the avoided costs of compliance.

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty

**DEFERRAL**  Reduction Adjustment

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

**PAYABLE PENALTY**

Screening Date 26-Mar-2008

Docket No. 2008-0528-PWS-E

PCW

Respondent City of Kirvin

Policy Revision 2 (September 2002)

Case ID No. 17752

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN101408953

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

## Compliance History Worksheet

## &gt;&gt; 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> )	0	0%
	Other written NOVs	2	4%
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 submitted</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%
<i>Please Enter Yes or No</i>			
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%

Adjustment Percentage (Subtotal 2) 24%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance History Notes

The compliance history enhancement is due to two prior Notices of Violation ("NOVs") containing violations that are dissimilar to the violations in the current enforcement action and one prior Agreed Order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 24%

Screening Date 26-Mar-2008

Docket No. 2008-0528-PWS-E

PCW

Respondent City of Kirvin

Policy Revision 2 (September 2002)

Case ID No. 17752

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN101408953

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 290.45(b)(1)(C)(i), Tex. Health & Safety Code § 341.0315(c), and TCEQ Agreed Order Docket No. 2004-1100-PWS-E, Ordering Provision 2.d.

Violation Description

Failed to provide a well capacity of 0.6 gallons per minute ("gpm") per connection. Specifically, with 172 connections, the City should be providing a minimum well capacity of approximately 103 gpm. The City currently provides a well capacity of only 65 gpm, which is a 37% deficiency.

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>
Potential	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes

Without sufficient well capacity, customers of the water system could experience water shortages, exposing the customers to significant amount of contaminants entering the system which would not exceed levels that are protective of human health.

Adjustment

Violation Events

Number of Violation Events  Number of violation days

mark only one with an x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="text" value="x"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Twelve quarterly events are recommended, calculated from the effective date of TCEQ Agreed Order Docket No. 2004-1100-PWS-E, May 23, 2005, to the date of case screening, March 26, 2008.

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 City of Kirvin  
 Case ID No. 17752  
 Reg. Ent. Reference No. RN101408953  
 Media Public Water Supply  
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No.commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
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**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$10,000	23-May-2005	31-Dec-2008	3.6	\$120	\$2,407	\$2,528
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: The delayed costs include the amount to increase the well capacity to 0.6 gpm per connection, calculated from the effective date of TCEQ Agreed Order Docket No. 2004-1100-PWS-E, to the estimated date of compliance.

**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]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance	\$10,000	TOTAL:	\$2,528
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Screening Date 26-Mar-2008  
 Respondent City of Kirvin  
 Case ID No. 17752  
 Reg. Ent. Reference No. RN101408953  
 Media [Statute] Public Water Supply  
 Enf. Coordinator Rebecca Clausewitz

Docket No. 2008-0528-PWS-E

PCW

Policy Revision 2 (September 2002)  
 PCW Revision February 29, 2008

Violation Number

Rule Cite(s)

Violation Description

Failed to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition. Specifically, on the date of the investigation, a leak in the service pump discharge line at the Farm-to-Market Road 27 storage plant was observed.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm		
		Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>

Percent

>> Programmatic Matrix

OR	Falsification	Harm		
		Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

Matrix Notes

Failure to keep the service pump discharge line watertight could cause an insignificant amount of contaminants to enter the system, which would not exceed levels that are protective of human health.

Adjustment

Violation Events

Number of Violation Events

Number of violation days

mark only one with an x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="text" value="x"/>

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 City of Kirvin  
 Case ID No. 17752  
 Reg. Ent. Reference No. RN101408953  
 Media Public Water Supply  
 Violation No. 2

Percent Interest 5.0  
 Years of Depreciation 15

Item Cost    Date Required    Final Date    Yrs    Interest Saved    Onetime Costs    EB Amount  
 Item Description    No commas or \$

**Delayed Costs**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$150	17-Jan-2008	30-Jan-2008	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

The delayed costs include the amount to repair the leak to the discharge line, calculated from the date of the investigation to the date of compliance.

**Avoided Costs**

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$150

TOTAL

\$0

Screening Date 26-Mar-2008 Docket No. 2008-0528-PWS-E PCW  
 Respondent City of Kirvin  
 Case ID No. 17752

Policy Revision 2 (September 2002)  
 PCW Revision February 29, 2008

Reg. Ent. Reference No. RN101408953  
 Media [Statute] Public Water Supply  
 Enf. Coordinator Rebecca Clausewitz

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text" value="1%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events   Number of violation days

mark only one with an x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>	

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 City of Kirvin  
 Case ID No. 17752  
 Reg. Ent. Reference No. RN101408953  
 Media Public Water Supply  
 Violation No. 3

Percent Interest 5.0  
 Years of Depreciation 15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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	\$100	17-Jan-2008	30-Sep-2008	0.7	\$4	n/a	\$4
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: The delayed cost includes the amount to create and begin maintaining a record keeping system for all customer service inspections, calculated from the date of the investigation to the estimated date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Avoided Costs</b>							
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]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance \$100 TOTAL \$4

Screening Date 26-Mar-2008  
 Respondent City of Kirvin  
 Case ID No. 17752  
 Reg. Ent. Reference No. RN101408953  
 Media [Statute] Public Water Supply  
 Enf. Coordinator Rebecca Clausewitz

Docket No. 2008-0528-PWS-E

PCW

Policy Revision 2 (September 2002)  
 PCW Revision February 29, 2008

Violation Number   
 Rule Cite(s)   
 Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events  Number of violation days

mark only one with an x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>

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 City of Kirvin  
 Case ID No. 17752  
 Reg. Ent. Reference No. RN101408953  
 Media Public Water Supply  
 Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

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

Item Description    No commas or \$

**Delayed Costs**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$100	17-Jan-2008	31-Oct-2008	0.8	\$4	n/a	\$4
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

The delayed costs includes the amount to prepare and begin maintaining a plant operations manual for the water system, calculated from the date of the investigation to the estimated date of compliance.

**Avoided Costs**

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4

Screening Date 26-Mar-2008  
 Respondent City of Kirvin  
 Case ID No. 17752  
 Reg. Ent. Reference No. RN101408953  
 Media [Statute] Public Water Supply  
 Enf. Coordinator Rebecca Clausewitz  
 Violation Number

Docket No. 2008-0528-PWS-E

PCW

Policy Revision 2 (September 2002)  
 PCW Revision February 29, 2008

Rule Cite(s)   
 Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5%"/>
Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events  Number of violation days

mark only one with an x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>

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 City of Kirvin  
 Case ID No. 17752  
 Reg. Ent. Reference No. RN101408953  
 Media Public Water Supply  
 Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

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

**Delayed Costs**

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	17-Jan-2005	17-Jan-2008	3.9	\$39	\$200	\$239

Notes for AVOIDED costs

The avoided costs includes the amount to have the well meters calibrated, calculated for the three year period prior to the date of the investigation.

Approx. Cost of Compliance

\$200

TOTAL

\$239

Screening Date 26-Mar-2008  
 Respondent City of Kirvin  
 Case ID No. 17752  
 Reg. Ent. Reference No. RN101408953  
 Media [Statute] Public Water Supply  
 Enf. Coordinator Rebecca Clausewitz

Docket No. 2008-0528-PWS-E

PCW

Policy Revision 2 (September 2007)  
 PCW Revision February 29, 2008

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 290.41(c)(1)(F)

Violation Description

Failed to have a sanitary control easement that covers the land within 150 feet of the well location. Specifically, there is no sanitary control easement or an approved exception to the easement requirement for Well No. 3.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5%"/>
Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes

Without a sanitary control easement, customers of the water system could be exposed to an insignificant amount of contaminants entering the system, which would not exceed levels that are protective of human health.

Adjustment

Violation Events

Number of Violation Events   Number of violation days

mark only one with an x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty

One single event is recommended.

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** City of Kirvin  
**Case ID No.** 17752  
**Reg. Ent. Reference No.** RN101408953  
**Media** Public Water Supply  
**Violation No.** 6

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

No commas or \$

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$300	17-Jan-2008	31-Dec-2008	1.0	\$1	\$19	\$20
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

The delayed cost includes the amount to obtain an easement for the land within 150 feet of the well location, calculated from the date of the investigation to the estimated date of compliance.

**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]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$300

TOTAL

\$20

Screening Date 26-Mar-2008  
 Respondent City of Kirvin  
 Case ID No. 17752  
 Reg. Ent. Reference No. RN101408953  
 Media [Statute] Public Water Supply  
 Enf. Coordinator Rebecca Clausewitz

Docket No. 2008-0528-PWS-E

PCW

Policy Revision 2 (September 2007)  
 PCW Revision February 29, 2008

Violation Number

Rule Cite(s)

Violation Description

Failed to inspect the interior of the pressure tanks at least once every five years. Specifically, on the date of the investigation, it was noted that the most recent inspections of the interior of the system's two pressure tanks were conducted in 2002.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes

Failure to inspect the interior of the pressure tanks could result in non-detection of a tank defect and loss of tank integrity, exposing customers of the water system to a significant amount of contaminants, which could exceed levels that are protective of human health.

Adjustment

Violation Events

Number of violation days

mark only one with an x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>

Violation Base Penalty

Two single events are recommended (one event per pressure tank).

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** City of Kirvin  
**Case ID No.** 17752  
**Reg. Ent. Reference No.** RN101408953  
**Media** Public Water Supply  
**Violation No.** 7

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

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

No commas or \$

**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	17-Jan-2003	17-Jan-2008	5.9	\$59	\$200	\$259
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided costs include the amount to inspect the interior of the water system's two pressure tanks, calculated for the five year period prior to the date of the investigation.

Approx. Cost of Compliance	\$200	TOTAL	\$259
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Screening Date 26-Mar-2008  
 Respondent City of Kirvin  
 Case ID No. 17752  
 Reg. Ent. Reference No. RN101408953  
 Media [Statute] Public Water Supply  
 Enf. Coordinator Rebecca Clausewitz

Docket No. 2008-0528-PWS-E

PCW  
 Policy Revision 2 (September 2002)  
 PCW Revision February 29, 2008

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

Matrix Notes

Adjustment

Violation Events

<input type="text" value="1"/>	<input type="text" value="69"/>	Number of violation days	
mark only one with an x	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$100"/>
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
single event	<input checked="" type="text" value="x"/>		

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** City of Kirvin  
**Case ID No.** 17752  
**Reg. Ent. Reference No.** RN101408953  
**Media** Public Water Supply  
**Violation No.** 8

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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	\$100	17-Jan-2008	31-Oct-2008	0.8	\$4	n/a	\$4
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: The delayed cost includes the amount to obtain the well completion data for Well No. 1 and maintain it on file, calculated from the date of the investigation to the estimated date of compliance.

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]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs:

Approx. Cost of Compliance \$100
TOTAL \$4

# Compliance History

Customer/Respondent/Owner-Operator: CN600514285 City of Kirvin Classification: AVERAGE Rating: 3.01  
Regulated Entity: RN101408953 CITY OF KIRVIN Classification: AVERAGE BY Site Rating: 3.01  
DEFAULT  
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0810019  
WATER LICENSING LICENSE 0810019  
Location: 100 Main St, Kirvin, Freestone County Rating Date: September 01 07 Repeat Violator: NO  
TCEQ Region: REGION 09 - WACO  
Date Compliance History Prepared: April 02, 2008  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: March 26, 2003 to March 26, 2008  
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.

Effective Date: 05/23/2005 ADMINORDER 2004-1100-PWS-E  
Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.39(h)(2)  
30 TAC Chapter 290, SubChapter D 290.39(h)(3)

Description: Failed to provide written notification to the E D before starting Commission conditionally approved construction of the installation of a 1,500 gallon pressure tank, failed to notify of the completion of the construction to attest that the completed work is substantial to and in accordance with Commission's requir.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(C)(i)  
5A THC Chapter 341, SubChapter A 341.0315(c)

Rqmt Prov: Docket No. 2004-1100-PWS-E, OP 2.d. ORDER

Description: Failure to provide a well capacity of 0.6 gpm per connection.

Classification: Minor

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

Description: Failure to equip the ground storage tank with a liquid level indicator located at the tank site.

Classification: Minor

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

Description: Failure to provide an intruder-resistant fence with lockable gates or a lockable building that is designed to prevent intruder access for the facility's potable water storage tanks and pressure maintenance facilities.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(2)

Description: Failure to equip the ground storage tank's roof hatch with a gasket to form a positive seal to prevent insects and other possible contaminants from entering the water supply.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(M)

Description: Failure to provide a suitable sampling cock on the discharge pipe of each well pump prior to any treatment.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(D)

Description: Failure to prevent livestock in pastures to be within 50 ft of water supply wells.

Classification: Minor

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

Description: Failure to install all water system electrical wiring in a securely mounted conduit in compliance with a local or national electrical code.

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.)

1	06/22/2004	(272812)
2	09/22/2005	(432656)
3	10/27/2005	(433152)
4	02/28/2008	(614083)

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

Date: 10/30/2003 (252879)

Self Report? NO

Classification: Minor

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

Description: Failure to have all electrical wiring securely mounted in conduit in compliance with a local or national electrical code. The well pump wiring in the pump house and at the wellhead must be mounted as required.

Date: 10/14/2005 (433152)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter F 290.118(a)  
30 TAC Chapter 290, SubChapter F 290.118(b)

Description: Failure to meet the secondary constituent maximum contamination level for manganese and iron.

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 KIRVIN  
RN101408953

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2008-0528-PWS-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Kirvin ("the City") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the City 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 Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the City.

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



### I. FINDINGS OF FACT

1. The City owns and operates a municipal public water system at 100 Main Street in Kirvin, Freestone County, Texas (the "Facility") that has approximately 172 service connections and serves at least 25 people per day for at least 60 days per year.
2. During an investigation conducted on January 17, 2008, TCEQ staff documented that the City did not:
  - a. Provide a minimum well capacity of 0.6 gallons per minute ("gpm") per connection. Specifically, with 172 connections, the City should be providing a minimum well capacity of approximately 103 gpm. The City currently provides a well capacity of only 65 gpm, which is a 37% deficiency.
  - b. Maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances in a watertight condition. Specifically, on the date of the investigation, a leak in the service pump discharge line at the Farm-to-Market Road ("FM") 27 storage plant was observed.
  - c. Maintain all customer service inspection certificates so that they can be made available for Commission review at the time of the investigation.
  - d. Provide a thorough and up-to-date plant operations manual for operator review and reference.
  - e. Calibrate the well meter on Well Nos. 1 and 3 at least once every three years.
  - f. Have a sanitary control easement that covers the land within 150 feet of the well location. Specifically, there is no sanitary control easement or an approved exception to the easement requirement for Well No. 3.
  - g. Inspect the interior of the pressure tanks at least once every five years. Specifically, on the date of the investigation, it was noted that the most recent inspections of the interior of the system's two pressure tanks were conducted in 2002.
  - h. Maintain the well completion data for Well No. 1 on file, including the well material setting data, geological log, sealing information, disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well.
3. The City received notice of the violations on or about March 4, 2008.
4. The Executive Director recognizes that the City has implemented the following corrective measures at the Facility:



- a. On January 30, 2008, the City repaired the leak on the service pump discharge line at the FM 27 storage plant; and
- b. On February 25, 2008, the City inspected the interior of the Pressure Tank No. 1.

## II. CONCLUSIONS OF LAW

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 Findings of Fact No. 2.a, the City failed to provide a minimum well capacity of 0.6 gpm per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(i), TEX. HEALTH & SAFETY Code § 341.0315(c), and TCEQ Agreed Order Docket No. 2004-1100-PWS-E, Ordering Provision 2.d.
3. As evidenced by Findings of Fact No. 2.b, the City failed to maintain the service pump discharge line in a watertight condition, in violation of 30 TEX. ADMIN. CODE § 290.46(m)(4).
4. As evidenced by Findings of Fact No. 2.c, the City failed to maintain all customer service inspection certificates so that they can be made available for Commission review at the time of the investigation, in violation of 30 TEX. ADMIN. CODE § 290.46(f)(2) and (f)(3)(E)(iv).
5. As evidenced by Findings of Fact No. 2.d, the City failed to provide a thorough and up-to-date plant operations manual, in violation of 30 TEX. ADMIN. CODE § 290.42(1).
6. As evidenced by Findings of Fact No. 2.e, the City failed to calibrate the well meter on Well Nos. 1 and 3 at least once every three years, in violation of 30 TEX. ADMIN. CODE § 290.46(s)(1).
7. As evidenced by Findings of Fact No. 2.f, the City failed to have a sanitary control easement that covers the land within 150 feet of Well No. 3, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(1)(F).
8. As evidenced by Findings of Fact No. 2.g, the City failed to inspect the interior of the Facility's two pressure tanks at least once every five years, in violation of 30 TEX. ADMIN. CODE § 290.46(m)(1)(B).
9. As evidenced by Findings of Fact No. 2.h, the City failed to maintain the well completion data for Well No. 1, in violation of 30 TEX. ADMIN. CODE § 290.46(n)(3).
10. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the City 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.



11. An administrative penalty in the amount of Three Thousand One Hundred Fourteen Dollars (\$3,114) 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 the Three Thousand One Hundred Fourteen Dollar (\$3,114) administrative penalty.

### III. ORDERING PROVISIONS

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

1. The City is assessed an administrative penalty in the amount of Three Thousand One Hundred Fourteen Dollars (\$3,114) as set forth in Section II, Paragraph 11 above, for violations of TCEQ rules and state statutes. 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 made payable to "TCEQ" and shall be sent with the notation "Re: City of Kirvin, Docket No. 2008-0528-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. It is further ordered that the City shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, begin maintaining copies of all customer service inspection certificates at the Facility so that they may be made available at the time of investigations, in accordance with 30 TEX. ADMIN. CODE § 290.46.
  - b. Within 30 days after the effective date of this Agreed Order:
    - i. Create and begin maintaining a thorough plant operations manual for the Facility, in accordance with 30 TEX. ADMIN. CODE § 290.42;
    - ii. Calibrate the well meter on Well Nos. 1 and 3, in accordance with 30 TEX. ADMIN. CODE § 290.46;
    - iii. Conduct an inspection of the interior of Pressure Tank No. 2, in accordance with 30 TEX. ADMIN. CODE § 290.46; and
    - iv. Obtain and begin maintaining on file the well completion data for Well No. 1, including the well material setting data, geological log, sealing information, disinfection information, microbiological sample results, and a chemical analysis



report of a representative sample of water from the well, in accordance with 30 TEX. ADMIN. CODE § 290.46.

- c. Within 45 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision 2.e. below, and include detailed supporting documentation along with photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions 2.a. and 2.b.
- d. Within 90 days after the effective date of this Agreed Order:
  - i. Obtain a sanitary control easement that covers the land within 150 feet of Well No. 3, in accordance with 30 TEX. ADMIN. CODE § 290.41; and
  - ii. Provide a minimum well capacity of 0.6 gpm per connection, in accordance with 30 TEX. ADMIN. CODE § 290.45.
- e. Within 105 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation along with photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision 2.d. 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

with a copy to:

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



3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the 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 the 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 a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
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. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.



## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

9/27/2008  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of City of Kirvin. I am authorized to agree to the attached Agreed Order on behalf of City of Kirvin, 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, City of Kirvin waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
City of Kirvin

  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order

