

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 3
DOCKET NO.: 2004-0295-MLM-E TCEQ ID: RN101384212 CASE NO.: 6015
RESPONDENT NAME: CITY OF WACO

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
<p>SITE WHERE VIOLATION(S) OCCURRED: located in the City of Waco, McLennan County</p> <p>TYPE OF OPERATION: public water supply system</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on October 29, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Shawn Slack, Litigation Division, MC 175, (512) 239-0063 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. Sandy VanCleave, Water Enforcement Section, MC 169, (512) 239-0667 TCEQ Regional Contact: Mr. Frank Burtleson, Waco Regional Office, MC R-9, (254) 761-3007 Respondent: The Honorable Virginia DuPuy, Mayor of Waco, P.O. Box 2570, Waco, Texas 76702 Respondent's Attorney: Mr. Jackson Battle, Brown McCarroll, L.L.P., 111 Congress Avenue, Suite 1400, Austin, Texas 78701</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: July 7, 2003, February 15, 2007, and February 20, 2007</p> <p>Date of NOEs Relating to this Case: September 2, 2003, and April 8, 2007</p> <p>Background Facts: An EDPRP was filed in this matter on February 4, 2005. This matter was referred to SOAH on December 6, 2005. An evidentiary hearing was held in this matter at SOAH on October 19th – 20th, 2006. A tentative settlement agreement was reached with Waco on or about February 14, 2007, and the case was remanded from SOAH on March 20, 2007. On or about July 2, 2007, the parties agreed to a settlement of this matter that included new violations, discovered on or about February 20, 2007. The Respondent was given a good faith effort to comply reduction of 10% on the new violations because it submitted documentation showing compliance before a settlement offer was made or a petition was filed regarding these violations. A signed Agreed Order was received on or about July 24, 2007.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>MLM:</p> <ol style="list-style-type: none"> Failed to locate ground water sources so there will be no danger of pollution from unsanitary surroundings [30 TEX. ADMIN. CODE § 290.41(c)(1)(A)]. Failed to prohibit water connections to establishments where an actual or potential contamination or system hazard exists without an air gap separation or an approved backflow prevention assembly between the regulated entity and the source of contamination, including failing to test the backflow assemblies and failing to keep the test results on file [30 TEX. ADMIN. CODE § 290.44(h)]. 	<p>Total Assessed: \$8,412</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$8,412</p> <p>The Respondent has paid the penalty amount of \$8,412 in full.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor <input checked="" type="checkbox"/> NA</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Order: A Findings Order is justified because the Respondent received three NOVs over the prior five-year period for the same or similar violations.</p>	<p>Corrective Action(s) Taken</p> <p>The Executive Director recognizes that the City has implemented the following corrective measures at the Facility:</p> <ol style="list-style-type: none"> Obtained an exception to the sanitary control easement rule requirement for all of the property within a 150 foot radius of the Harris Creek Well (Well No. 1). Established a back flow prevention program to seek out and eliminate potential cross connections at non-residential locations. Provided housing for gas chlorination equipment at the Mount Carmel surface water treatment plant. Provided the storage tank with a water level indicator. Obtained an exception on or about February 22, 2005, concerning the location of the air release devices being located below ground level and below overflow level of the vault. Installed air release devices at the three identified locations in the City's potable water distribution system in a manner that precludes the possibility of submergence or entrance of contaminants.

- | | | |
|---|--|--|
| <p>3. Failed to properly install air release devices in such a manner as to preclude the possibility of submergence or possible entrance of contaminants and to cover all openings with screening [30 TEX. ADMIN. CODE § 290.44(d)(1)].</p> <p>4. Failed to provide housing for gas chlorination equipment [30 TEX. ADMIN. CODE § 290.42(e)(4)(B)].</p> <p>5. Failed to provide the storage tank with a water level indicator [30 TEX. ADMIN. CODE § 290.43(c)(4)].</p> <p>6. Failed to properly install air release devices in the distribution system so that the vents on the double check devices were at a 90 degree elbow to extend the double check's opening to point downward [30 TEX. ADMIN. CODE § 290.44(d)(1) and TCEQ Agreed Order Docket No. 2006-0359-PWS-E].</p> | | |
|---|--|--|



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (09/02)

PCW Revision 2/10/2004

DATES

PCW 4-Jan-2005 Screening 2-Mar-2004 Priority Due 30-Jun-2004 EPA Due

RESPONDENT INFORMATION

Respondent City of Waco

Respondent/Site ID No(s) PWS ID No. 1550008; RN101384212; CN600131940

Facility/Site Region 9 - Waco Major/Minor Source Major

CASE INFORMATION

Enf./Case ID No(s) CCEDS Enf. ID No. 6015

Docket No. 2004-0295-MLM-E No. Violations 5

Case Priority 3 Order Type Findings

Enf. Coordinator Elvia Maske EC's Team Enforcement Team 5

Media Program(s) Public Water Supply

Admin. Penalty \$ Limit Minimum \$50 Maximum \$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$6,850

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 10% Enhancement **Subtotals 2, 3 & 7** \$685

Notes An adjustment is recommended because the Respondent has received three prior Notices of Violation (NOVs) for same or similar violations dated June 13, 2000, August 9, 2001 and May 30, 2002.

Culpability 0% Enhancement **Subtotal 4** \$0

No Select Yes/No

Notes Does not meet culpability criteria.

Good Faith Effort to Comply 0% Reduction **Subtotal 5** \$0

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
None of the above	X	(mark with small x)

Notes Does not meet good faith criteria.

Economic Benefit 0% Enhancement* **Subtotal 6** \$0

\$1,655	Total EB Amounts	*Capped at the Total EB \$ Amount
\$21,300	Approx. Cost of Compliance	=

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$7,535

OTHER FACTORS AS JUSTICE MAY REQUIRE 0% **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage. (enter number only; e.g. -30 for -30%)

Notes

Final Penalty Amount \$7,535

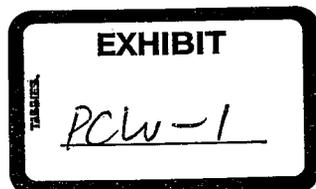
STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$7,535

DEFERRAL Deferral 0% Reduction **Adjustment** \$0

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

Notes No deferral is recommended as this is a Findings Order.

PAYABLE PENALTY \$7,535



Screening Date 2-Mar-2004 **Docket Number** 2004-0295-MLM-E **PCW**
Respondent City of Waco **Policy Revision 2 (09/02)**
Case ID No. CCEDS Enf. ID No. 6015 **PCW Revision 2/10/2004**
Respondent/Site ID No. PWS ID No. 1550008; RN101384212; CN600131940
Media [Statute] Public Water Supply
Enf. Coordinator Elvia Maske
Site Address

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 (number of NOVs meeting criteria)	3	15%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	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	Yes	-5%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2)

>> **Repeat Violator (Subtotal 3)**

Select Yes/No

Adjustment Percentage (Subtotal 3)

>> **Compliance History Person Classification (Subtotal 7)**

Select High, Average or Poor

Adjustment Percentage (Subtotal 7)

Compliance History Summary

Compliance History Notes

Total Adjustment Percentage (Subtotals 2, 3 & 7)

Screening Date 02-Mar-04 Docket Number 2004-0295-MLM-E **PCW**

Respondent City of Waco Policy Revision 2 (09/02)

Case ID No. CCEDS Enf. ID No. 6015 PCW Revision 2/10/2004

Respondent/Site ID No. PWS ID No. 1550008; RN101384212; CN600131940

Media [Statute] Public Water Supply

Enf. Coordinator Elvia Maske

Violation Number

Primary Rule Cite

Secondary Cite(s)

Violation Description

Base Penalty

» Environmental, Property and Human Health Matrix

Harm

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

Percent

» Programmatic Matrix

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

Percent

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one; use small 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

Events Notes

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 Waco
ID Number(s) CCEDS Enf. ID No. 6015
Media [Statute] Public Water Supply
Violation Number 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
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)	\$100	1-Jan-2001	8-Jan-2004	3.0	\$15	n/a	\$15

Notes for DELAYED costs

Estimated cost to submit a written request for an exception to the rule to use the well.

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/equip				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

TOTAL

Screening Date 02-Mar-04 Docket Number 2004-0295-MLM-E **PCW**

Respondent City of Waco Policy Revision 2 (09/02)

Case ID No. CCEDS Enf. ID No. 6015 PCW Revision 2/10/2004

Respondent/Site ID No. PWS ID No. 1550008; RN101384212; CN600131940

Media [Statute] Public Water Supply

Enf. Coordinator Elvia Maske

Violation Number

Primary Rule Cite

Secondary Cite(s)

Violation Description

Base Penalty

» Environmental, Property and Human Health Matrix

Harm

OR	Release	Major	Moderate	Minor	Percent
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="50%"/>

» Programmatic Matrix

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

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one; use small x

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

Violation Base Penalty

Events Notes

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 Waco
 ID Number(s) CCEDS Enf. ID No. 6015
 Media [Statute] Public Water Supply
 Violation Number 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (As needed)	\$15,000	7-Jul-2003	1-Sep-2004	1.2	\$58	\$1,156	\$1,214
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

Estimated cost of installation and testing of air gaps or backflow prevention devices.

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/equip				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 \$15,000

TOTAL \$1,214

Screening Date 02-Mar-04 **Docket Number** 2004-0295-MLM-E **PCW**
Respondent City of Waco **Policy Revision 2 (09/02)**
Case ID No. CCEDS Enf. ID No. 6015 **PCW Revision 2/10/2004**
Respondent/Site ID No. PWS ID No. 1550008; RN101384212; CN600131940
Media [Statute] Public Water Supply
Enf. Coordinator Elvia Maske
Violation Number
Primary Rule Cite
Secondary Cite(s)
Violation Description

Base Penalty

» Environmental, Property and Human Health Matrix

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

» Programmatic Matrix

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

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one; use small 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

Events Notes

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 Waco
ID Number(s) CCEDS Enf. ID No. 6015
Media [Statute] Public Water Supply
Violation Number 3

Percent Interest	Years of Depreciation
5.0	15

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

Equipment	\$2,000	7-Jul-2003	30-Jun-2004	1.0	\$7	\$131	\$138
Buildings				0.0	\$0	\$0	\$0
Other (As needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$2,000	7-Jul-2003	30-Jun-2004	1.0	\$7	\$131	\$138
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

Estimate of costs for delayed failure to design and maintain water distribution system to preclude the possibility of submergence of the automatic air release devices aimed to prevent the entrance of contaminants.

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/equip				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

TOTAL

Screening Date 02-Mar-04 Docket Number 2004-0295-MLM-E **PCW**

Respondent City of Waco Policy Revision 2 (09/02)

Case ID No. CCEDS Enf. ID No. 6015 PCW Revision 2/10/2004

Respondent/Site ID No. PWS ID No. 1550008; RN101384212; CN600131940

Media [Statute] Public Water Supply

Enf. Coordinator Elvia Maske

Violation Number

Primary Rule Cite

Secondary Cite(s)

Violation Description

Base Penalty

» Environmental, Property and Human Health Matrix

Harm

OR	Release	Major	Moderate	Minor	Percent
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="50%"/>

» Programmatic Matrix

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

Matrix Notes

Failure to protect the chlorine gas cylinder from adverse weather conditions could deteriorate the cylinder and would allow gas to escape and exceed levels protective of human health and the environment.

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one; use small x

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

Violation Base Penalty

Events Notes

Eight monthly events are recommended from the date the violation was documented during the July 7, 2003 investigation to the date of screening (March 2, 2004).

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 Waco
ID Number(s) CCEDS Enf. ID No. 6015
Media [Statute] Public Water Supply
Violation Number 4

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
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings	\$2,000	7-Jul-2003	1-Aug-2004	1.1	\$7	\$143	\$150
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

Estimated cost to provide housing for the gas chlorination cylinder from the date of the investigation to the expected 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/equip				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

TOTAL

Screening Date 02-Mar-04 Docket Number 2004-0295-MLM-E PCW
 Respondent City of Waco Policy Revision 2 (09/02)
 Case ID No. CEEDS Enf. ID No. 6015 PCW Revision 2/10/2004

Respondent/Site ID No. PWS ID No. 1550008; RN101384212; CN600131940

Media [Statute] Public Water Supply

Enf. Coordinator Elvia Maske

Violation Number 5

Primary Rule Cite 30 Tex. Admin. Code § 290.43(c)(4)

Secondary Cite(s)

Violation Description

Failure to provide the storage tank with a water level indicator. Specifically, during the investigation it was documented that the pressure gauge that was provided on the GST did not indicate the feet of water in the tank.

Base Penalty \$1,000

» Environmental, Property and Human Health Matrix

Harm

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential			X	

» Programmatic Matrix

OR	Programmatic Matrix			Percent
	Falsification	Major	Moderate	

Matrix Notes

Failure to have a proper water level indicator on the GST can contribute to inadequate water supply because the operator cannot make the necessary production and usage calculations to ensure a continuous and safe water supply.

Adjustment -\$900

Base Penalty Subtotal \$100

Violation Events

Number of Violation Events 1

mark only one; use small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$100

Events Notes

One single event is recommended from the date the violation was documented during the July 7, 2003 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$1

Violation Final Penalty total \$110

This Violation Final Assessed Penalty (adjusted for limits) \$110

Economic Benefit Worksheet

Respondent City of Waco
 ID Number(s) CCEDS Enf. ID No. 6015
 Media [Statute] Public Water Supply
 Violation Number 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment	\$200	7-Jul-2003	21-Jul-2003	0.0	\$0	\$1	\$1
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

This is an estimated cost to provide the storage tank with a water level indicator.

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/equip				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

TOTAL

Compliance History

(For Penalty Calculation Purposes Only)

Customer/Respondent/Owner-Operator: CN600131940 City of Waco Classification: Average 7.06
Regulated Entity: RN101384212 CITY OF WACO Classification: N/A Site Rating:
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1550008
WATER LICENSING LICENSE 1550008
Location:
TCEQ Region: REGION 09 - WACO
Date Compliance History Prepared: March 02, 2004
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: March 02, 1999 to March 02, 2004
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Elvia Maske Phone: (512) 239-0789

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 dates of investigations.

1. 08/29/2003
2. 07/07/2003
3. 02/07/2003
4. 03/18/2002
5. 07/30/2002
6. 05/29/2001
7. 04/06/2000
8. 08/13/1999

E. Written notices of violations (NOV).

Date: June 13, 2000

1. Self Report? No Classification: moderate
Citation: 30 TAC §§290.44(h)(1) and 290.46(j)(3)(A)
Description: Failure to have backflow prevention device to prevent possible contamination.
2. Self Report? No Classification: moderate
Citation: 30 TAC § 290.42(d)(6)(E)(i)

EXHIBIT

CH-1

- Description: Failure to have containment facilities for storage tanks
 3. Self Report? No Classification: moderate
 Citation: 30 TAC § 290.43(c)(8)
 Description: Failure to perform storage tank maintenance
 4. Self Report? No Classification: moderate
 Citation: 30 TAC § 290.45
 Description: Failure to meet the minimum water system capacity requirements
 5. Self Report? No Classification: moderate
 Citation: 30 TAC § 291.93(a)(3)
 Description: Failed to submit planning report explaining how service demands will be reached when reaching 85%
 exceedance of system's total storage capacity requirements
 6. Self Report? No Classification: moderate
 Citation: 30 TAC § 290.119(2)
 Description: Failure to perform monthly calibration of chlorine residual monitoring
 7. Self Report? No Classification: moderate
 Citation: 30 TAC § 290.44(d)(1)
 Description: Failure to properly locate and screen the air release device
 8. Self Report? No Classification: moderate
 Citation: 30 TAC § 290.43(c)(2)
 Description: Failure to seal to the roof hatch gasket to properly seal when closed
 9. Self Report? No Classification: moderate
 Citation: 30 TAC § 290.43(c)(2)
 Description: Failure to have a raised curbing of at least 4 inches in height with a cover that overlaps and terminates in a
 downward direction at least 2 inches with arrangements for keeping it locked in place
 10. Self Report? No Classification: moderate
 Citation: 30 TAC § 290.119(1)
 Description: Failure to conduct weekly and quarterly calibration of monitoring for turbidity
 11. Self Report? No Classification: moderate
 Citation: 30 TAC § 290.41(e)(2)(C)
 Description: Failure to provide signs to restrict zone of 200 feet radius from the raw water intake works to prohibit
 recreational activities and trespassing
 12. Self Report? No Classification: moderate
 Citation: 30 TAC § 290.42(d)(12)
 Description: Failure to properly color code water and chemical feed, effluent, influent, waste and backwash lines
 13. Self Report? No Classification: moderate
 Citation: 30 TAC § 290.42(a)
 Description: Failure to meet maximum daily capacity

Date: August 9, 2001

1. Self Report? No Classification: moderate
 Citation: 30 TAC § 290.43(c)
 Description: Failure to perform storage tank maintenance
 2. Self Report? No Classification: moderate
 Citation: 30 TAC § 290.45
 Description: Failure to meet the minimum water system capacity requirements
 3. Self Report? No Classification: moderate
 Citation: 30 TAC § 290.44(d)(1)
 Description: Failure to properly locate and screen the air release device
 4. Self Report? No Classification: moderate
 Citation: 30 TAC § 290.41(e)(3)(C) and § 290.43(e)
 Description: Failure to have an intruder-resistant fence around the water treatment plant and all appurtenances and the
 potable water storage tanks and pressure maintenance facilities with locking gates
 5. Self Report? No Classification: moderate
 Citation: 30 TAC § 290.42(a)
 Description: Failure to meet the maximum daily capacity

Date: May 30, 2002

1. Self Report? No Classification: Moderate
 Citation: 30 TAC § 288.30(3)
 Description: Failure to provide and maintain a copy of an adopted drought contingency plan.
 2. Self Report? No Classification: Moderate
 Citation: 30 TAC § 290.46(f)(2)
 Description: Failure to maintain and provide a copy of the sanitary control easement record
 3. Self Report? No Classification: moderate
 Citation: 30 TAC § 290.41(c)(3)(B)
 Description: Failure to provide a well casing eighteen inches above the natural ground surface and a minimum of 1 inch

- above the pump motor foundation block.
4. Self Report? No Classification: moderate
Citation: 30 TAC § 290.43(d)(3)
Description: Failure to provide a filter or other device to prevent compressor lubricants and other contaminants from entering the pressure tank.
 5. Self Report? No Classification: minor
Citation: 30 TAC § 290.46(m)
Description: Failure to maintain all regulated facilities to ensure the reliability and general appearance and to reduce costly repairs due to lack of proper maintenance; also failure to remove brush.
 6. Self Report? No Classification: minor
Citation: 30 TAC § 290.43(c)(8) and § 290.46(m)
Description: Failure to properly maintain the exterior coating of the elevated storage tank
 7. Self Report? No Classification: moderate
Citation: 30 TAC § 290.43(c)(1)
Description: Failure to protect vent opening, specifically failure to have vents screened to prevent insects and other contaminants from entering the water supply.
 8. Self Report? No Classification: minor
Citation: 30 TAC § 290.38(22) and § 290.43(3)
Description: Failure to provide proper barbed wire installation on the top of the facility fence and make it intruder-resistant
 9. Self Report? No Classification: minor
Citation: 30 TAC § 290.43(c)(4)
Description: Failure to provide a proper water level indicator for the elevated storage tank
 10. Self Report? No Classification: moderate
Citation: 30 TAC § 290.44(d)(1)
Description: Failure to have proper automatic air release devices in the distribution system
 11. Self Report? No Classification: moderate
Citation: 30 TAC § 290.41(e)(2)(C)
Description: Failure to mark the 200 foot restricted zone around the raw water intake with markers or buoys.
 12. Self Report? No Classification: minor
Citation: 30 TAC § 290.43(c)(8)
Description: Failure to maintain all facilities for potable water storage.
 13. Self Report? No Classification: moderate
Citation: 30 TAC §§ 290.44(h)(1), (4) and 290.47(i), 291.93(5)
Description: Failure to enforce the cross connection control program and provide a suitable backflow assembly
 14. Self Report? No Classification: moderate
Citation: 30 TAC § 290.46(s)(1)
Description: Failure to calibrate flow measuring devices and rate-of-flow controllers at least once every 12 months.

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.

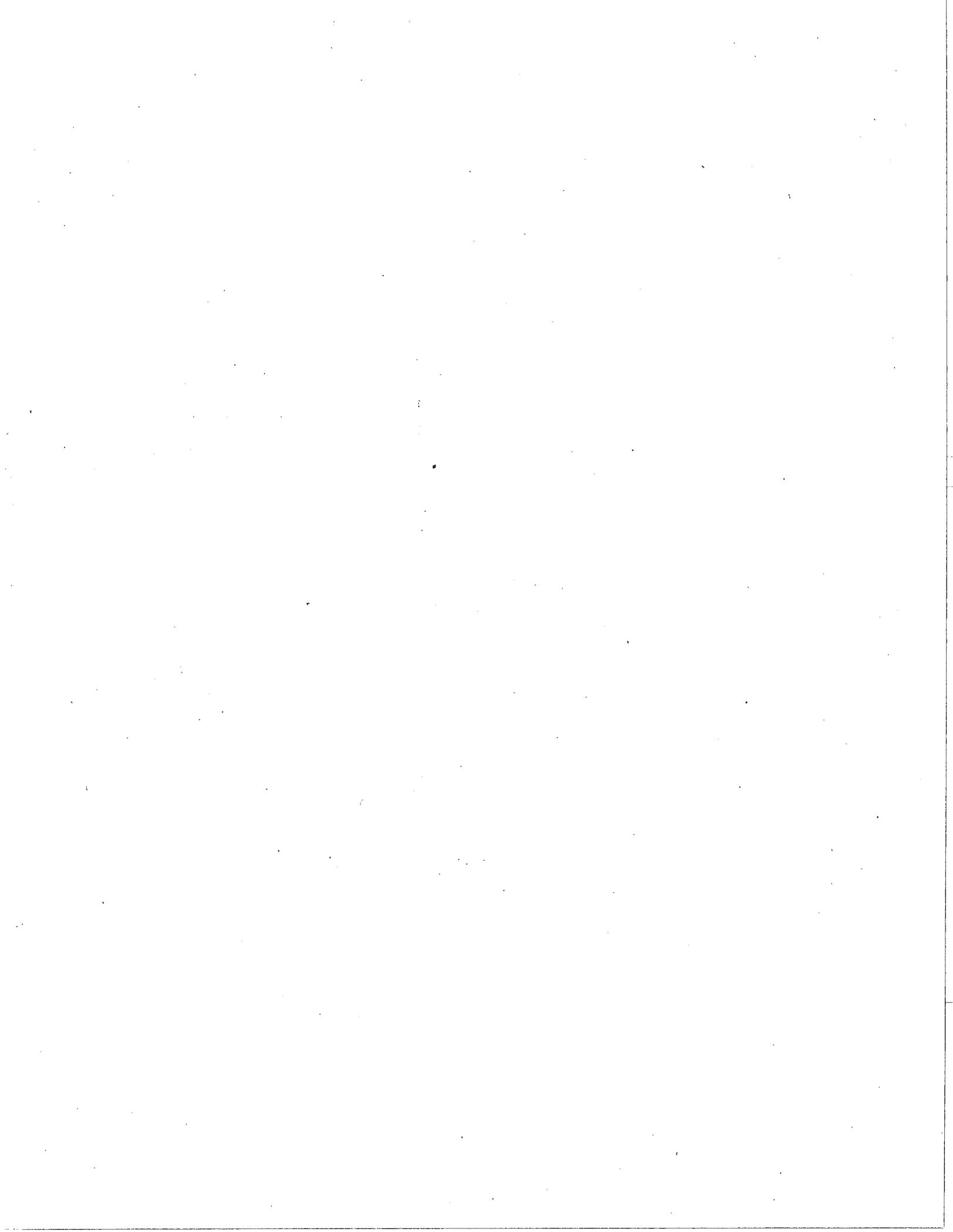
Type	Tier	Certification Date
CLEAN TEXAS PROGRAM	PARTNERSHIP	01/10/2001
CLEAN TEXAS PROGRAM	PARTNER	01/10/2001

J. Early compliance.

N/A

Sites Outside of Texas

N/A





Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision April 26, 2007

TCEQ

DATES	Assigned	9-Apr-2007	Screening	20-Apr-2007	EPA Due	30-Nov-2007
	PCW	7-Dec-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Waco
Reg. Ent. Ref. No.	RN101384212
Facility/Site Region	9-Waco
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	6015	No. of Violations	1
Docket No.	2004-0295-MLM-E	Order Type	Findings
Media Program(s)	Public Water Supply	Enf. Coordinator	Elvia Maske
Multi-Media		EC's Team	Team 6
Admin. Penalty \$	Limit Minimum \$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$750
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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	27% Enhancement	Subtotals 2, 3, & 7	\$202
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Notes: The Respondent received one agreed order with a denial of liability, one NOV for the same or similar violations as those addressed in this enforcement action, and one NOV for other violations.

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	10% Reduction	Subtotal 5	\$75
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes: The Respondent came into compliance on June 13, 2007.

Total EB Amounts	\$13	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$250	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$877
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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	\$877
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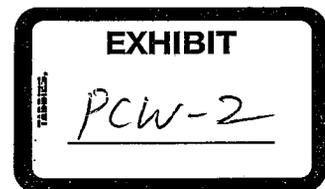
STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$877
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$877
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Screening Date 20-Apr-2007

Docket No. 2004-0295-MLM-E

PCW

Respondent City of Waco

Policy Revision 2 (September 2002)

Case ID No. 6015

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN101384212

Media [Statute] Public Water Supply

Enf. Coordinator Elvia Maske

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 (number of NOVs meeting criteria)	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

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) 27%

>> 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 Respondent received one agreed order with a denial of liability, one NOV for the same or similar violations as those addressed in this enforcement action, and one NOV for other violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 27%

Screening Date 20-Apr-2007

Docket No. 2004-0295-MLM-E

PCW

Respondent City of Waco

Policy Revision 2 (September 2002)

Case ID No. 6015

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN101384212

Media [Statute] Public Water Supply

Enf. Coordinator Elvia Maske

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 290.44(d)(1) and TCEQ Agreed Order Docket No. 2006-0359-PWS-E

Violation Description Failed to properly install air release devices in the distribution system. Specifically, during the investigation, the investigator documented that the double check devices of the air release valves at three locations were not installed in accordance with the conditions specified in an exception letter dated February 22, 2005. The vents on the double check devices were not at a 90 degree elbow to extend the double check's opening to point downward.

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 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

Human health or the environment will or could be exposed to a significant amount of pollutants which may not exceed levels that are protective of human health or environmental receptors as a result of the violation.

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

Three quarterly events are recommended based on the effective date of Agreed Order Docket No. 2006-0359-PWS-E, September 21, 2006 to the screening date, April 20, 2007.

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 Waco
Case ID No.: 6015
Reg. Ent. Reference No.: RN101384212
Media: 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
<small>No commas or \$</small>							

Delayed Costs

Equipment	\$250	21-Sep-2006	13-Jun-2007	0.7	\$1	\$12	\$13
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

Estimated cost to properly install air release devices in the distribution system. The date required is the effective date of Agreed Order Docket No. 2006-0359-PWS-E. The final date is the 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

\$250

TOTAL

\$13

Compliance History

Customer/Respondent/Owner-Operator:	CN600131940	City of Waco	Classification: AVERAGE	Rating: 3.46
Regulated Entity:	RN101384212	CITY OF WACO	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY		REGISTRATION	1550008
	WATER LICENSING		LICENSE	1550008
Location:				
TCEQ Region:	REGION 09 - WACO			
Date Compliance History Prepared:	May 03, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 03, 2002 to May 03, 2007			

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

Name: Sandy VanCleave Phone: (512) 239-2670

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: 09/21/2006 | ADMINORDER 2006-0359-PWS-E |
| Classification: Minor | |
| Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(4)(B) | |
| Description: Failed to properly house gas chlorination equipment and cylinders of chlorine in separate buildings or separate rooms with impervious walls or partitions separating all mechanical and electrical equipment from the chlorine facilities. | |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 290, SubChapter D 290.44(d)(1) | |
| Description: Failed to properly install air release devices in the distribution system. | |
| Classification: Minor | |
| Citation: 30 TAC Chapter 290, SubChapter D 290.42(m) | |
| Description: Failed to protect all water treatment plants with an intruder-resistant fence with lockable gates. | |
| Classification: Minor | |
| Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(2) | |
| Description: Failed to provide operating reports and records for review during inspections. | |
| Classification: Minor | |
| Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(13)(A) | |
| Description: Failed to properly identify the compressed air line for the air scour backwash facilities. | |

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

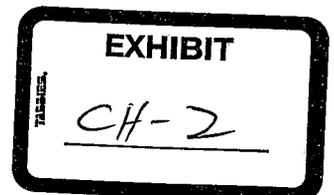
N/A

C. Chronic excessive emissions events.

N/A

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

- | | | |
|---|------------|-------------------|
| 1 | 07/30/2002 | (IE0019068001001) |
| 2 | 02/07/2003 | (21604) |
| 3 | 08/29/2003 | (35545) |
| 4 | 04/15/2004 | (266818) |
| 5 | 07/19/2004 | (275428) |
| 6 | 02/18/2005 | (345566) |
| 7 | 09/30/2005 | (374802) |
| 8 | 02/13/2006 | (438164) |
| 9 | 04/04/2007 | (539399) |



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

Date: 07/16/2004 (275428)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.44(h)(1)[G]

Description: Failure to prohibit water connections to establishments where an actual or potential contamination or system hazard exists without an air gap separation or an approved backflow prevention assembly between the Facility's system and the source of contamination including the failure to test and demonstrate test results of

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(4)(B)

Description: Failure to provide housing for the gas chlorination equipment.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.44(d)(1)

Description: Failure to properly install air release devices in such a manner as to preclude the possibility of submergence or possible entrance of contaminants and to cover all openings with screening.

Date: 02/17/2005 (345566)

Self Report? NO Classification: Minor

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

Description: Failure to provide an intruder-resistant fence in order to protect the water storage tank.

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.

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 WACO,
RN101384212

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2004-0295-MLM-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 Waco ("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 Jackson Battle of the law firm Brown McCarroll L.L.P., 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 supply system located in the City of Waco, McLennan County, Texas (the "Facility") that has approximately 61,202 service connections and serves at least 25 people per day for at least 60 days per year.

2. During an inspection on or about July 7, 2003, a TCEQ Waco Regional Office investigator documented that the City:
 - a. failed to locate ground water sources so there will be no danger of pollution from unsanitary surroundings. Specifically, Well No. 1 is located within 150 feet of a septic tank drainfield;
 - b. failed to prohibit water connections to establishments where an actual or potential contamination or system hazard exists without an air gap separation or an approved backflow prevention assembly between the regulated entity and the source of contamination, including failing to test and demonstrate test results of tests required of all assemblies;
 - c. failed to properly install air release devices in such a manner as to preclude the possibility of submergence or possible entrance of contaminants and to cover all openings with screening. Specifically, several air release devices were observed to be located below ground level and below overflow level of the vault;
 - d. failed to provide housing for gas chlorination equipment. Specifically, the one ton chlorine cylinder at the Mount Carmel surface water treatment plant was not protected from adverse weather conditions; and
 - e. failed to provide the storage tank with a water level indicator.
3. The City received notices of the violations listed in paragraph No. 2 on or about September 7, 2003.
4. During an inspection on or about February 20, 2007, a TCEQ Waco Regional Office investigator documented that the City failed to properly install air release devices in the distribution system. Specifically, during the investigation, the investigator documented that the double check devices of the air release valves at three locations were not installed in accordance with the conditions specified in an exception letter dated February 22, 2005, because the vents on the double check devices were not at a 90 degree elbow to extend the double check's opening to point downward.
5. The Executive Director recognizes that the City has implemented the following corrective measures at the Facility in response to this enforcement action:
 - a. Obtained an exception to the sanitary control easement rule requirement for all of the property within a 150 foot radius of the Harris Creek Well (Well No. 1);

- b. Established a back flow prevention program to seek out and eliminate potential cross connections at non-residential locations;
- c. Provided housing for gas chlorination equipment at the Mount Carmel surface water treatment plant; and
- d. Provided the storage tank with a water level indicator.
- e. Obtained an exception on or about February 22, 2005, concerning the location of the air release devices being located below ground level and below overflow level of the vault.
- f. Installed air release devices at the three identified locations in the City's potable water distribution system in a manner that precludes the possibility of submergence or entrance of contaminants in compliance with 30 TEX. ADMIN. CODE § 290.44(d)(1), thereby eliminating the need for double check devices in accordance with the February 22, 2005 exception letter.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, the City is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341.
2. As evidenced by Finding of Fact No. 2.a., the City has failed to locate ground water sources so there will be no danger of pollution from unsanitary surroundings, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(1)(A).
3. As evidenced by Finding of Fact No. 2.b., the City has failed to prohibit water connections to establishments where an actual or potential contamination or system hazard exists without an air gap separation or an approved backflow prevention assembly between the regulated entity and the source of contamination, including failing to test the backflow assemblies and failing to keep the test results on file, in violation of 30 TEX. ADMIN. CODE § 290.44(h).
4. As evidenced by Finding of Fact No. 2.c., the City has failed to properly install air release devices in such a manner as to preclude the possibility of submergence or possible entrance of contaminants and to cover all openings with screening, in violation of 30 TEX. ADMIN. CODE § 290.44(d)(1).
5. As evidenced by Finding of Fact No. 2.d., the City has failed to provide housing for gas chlorination equipment, in violation of 30 TEX. ADMIN. CODE § 290.42(e)(4)(B).

6. As evidenced by Finding of Fact No. 2.e., the City has failed to provide the storage tank with a water level indicator, in violation of 30 TEX. ADMIN. CODE § 290.43(c)(4).
7. As evidenced by Finding of Fact No. 4, the City has failed to properly install air release devices in the distribution system so that the vents on the double check devices were at a 90 degree elbow to extend the double check's opening to point downward, in violation of 30 TEX. ADMIN. CODE § 290.44(d)(1) and TCEQ Agreed Order Docket No. 2006-0359-PWS-E.
8. 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.
9. An administrative penalty in the amount of eight thousand four hundred twelve dollars (\$8,412.00) 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 eight thousand four hundred twelve dollars (\$8,412.00) 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 eight thousand four hundred twelve dollars (\$8,412.00) as set forth in Conclusion of Law No. 9 for violations of TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ. 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 Waco; Docket No. 2004-0295-MLM-E" to:

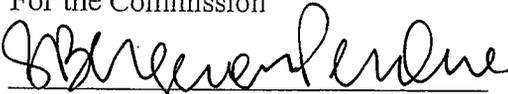
Financial Administration Division, Revenues
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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



For the Executive Director

10/9/07

Date

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

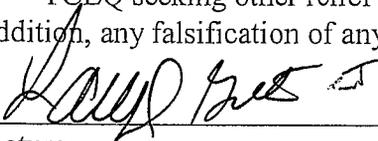
I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein.

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

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

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

Signature



Larry D. Groth, P.E.

Name (printed or typed)

Authorized Representative

City of Waco

Date

7/11/07

Title

City Manager