

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-0682-MLM-E TCEQ ID: RN101230654 CASE NO.: 5765

RESPONDENT NAME: JOSEPH GABER DBA CODY'S MARKET & MARINA, AND VICTORIA GABER DBA CODY'S MARKET & MARINA

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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 checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" 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: 5105 Tin Top Road, Weatherford, Parker County</p> <p>TYPE OF OPERATION: convenience store with public water system and retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There is no record of additional pending enforcement actions regarding this facility.</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 January 7, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Ms. Rebecca Clausewitz, Water Enforcement Section, MC R-13, (210) 403-4012 TCEQ Regional Contact: Mr. Sid Slocum, DFW Regional Office, MC R-4, (817) 588-5901 Respondent: Mr. Joseph Gaber and Mrs. Victoria Gaber, 5105 Tin Top Road, Weatherford, Texas 76087 Respondent's Attorney: Not represented by counsel on this enforcement matter.</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: May 5, 2005 and November 21, 2006</p> <p>Dates of NOEs Relating to this Case: June 23, 2005 and November 22, 2006</p> <p>Background Facts: The EDPRP was filed on September 8, 2006. It was sent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green cards," the Respondents received notice of the EDPRP on September 9, 2006, as evidenced by the signature on the card. The EDFARP was filed on December 11, 2006. It was sent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green cards," the Respondents received notice of the EDFARP on December 12, 2006, as evidenced by the signature on the card. The EDSARP was filed on June 13, 2007. It was sent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green cards," the Respondents received notice of the EDSARP on June 14, 2007, as evidenced by the signature on the card. The Respondents failed to respond, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>The Respondents in this case do not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PWS:</p> <ol style="list-style-type: none"> Failed to provide disinfection equipment to maintain a free chlorine residual of 0.2 mg/L throughout the distribution system at all times, failed to test the chlorine residual on water collected from various locations within the distribution system using a test kit which employs a DPD indicator, and failed to maintain a supply of calcium hypochlorite 	<p>Total Assessed: \$19,651</p> <p>Total Deferred: \$0</p> <p>Total Due to General Revenue: \$19,651</p> <p>This is a Default Order. The Respondents have not actually paid any of the assessed penalty but will be required to do so under the terms of this Order</p> <p>Site Compliance History Classification N/A</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Respondent's UST delivery certificate is revoked immediately.</p> <p>Corrective Actions Taken:</p> <ol style="list-style-type: none"> Performed an operability test on the cathodic protection system. Implemented a release detection method for the USTs. Begun conducting effective manual or automatic inventory control procedures for all USTs. <p>Ordering Provisions:</p> <ol style="list-style-type: none"> Within 10 days, send delivery certificate to TCEQ. Within 30 days: <ol style="list-style-type: none"> Provide disinfection equipment and ensure that the equipment is operated to maintain a free chlorine residual of 0.02 mg/L; Begin conducting and recording the results of disinfectant residual tests taken at representative locations in the distribution system using a test kit which employs a DPD indicator; Implement procedures to ensure that a supply of calcium hypochlorite disinfectant is kept on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service; Install a flow meter on the well pump discharge line; Begin maintaining monthly operation reports for the PWS Facility; Compile a plant operations manual for the PWS Facility; and Develop a written Sample Siting Plan for the PWS Facility showing bacteriological sampling points on the systems map. Within 45 days, submit documentation demonstrating compliance with Ordering Provision nos. 1. through 2.g.

**RESPONDENT NAME: JOSEPH GABER DBA CODY'S MARKET & MARINA, AND
 VICTORIA GABER DBA CODY'S MARKET & MARINA
 DOCKET NO.: 2006-0682-MLM-E**

<p>disinfectant on hand for use when making repairs, setting meters and disinfecting new mains prior to placing them in service [30 TEX. ADMIN. CODE §§ 290.42(b)(1), 290.46(d)(2)(A), 290.110(d)(3)(C)(ii) and 290.46(h)].</p> <p>2. Failed to secure a sanitary control easement for well No. 1 [30 TEX. ADMIN. CODE § 290.41(c)(1)(F)].</p> <p>3. Failed to provide a well casing 18 inches above the elevation of the finished floor of the pump house or natural ground surface, failed to provide a concrete sealing block that extends at least three feet from the exterior well casing in all directions, failed to provide a well casing vent with a 16-mesh or finer corrosion resistant screen, and failed to seal the well head with the use of gaskets or a pliable crack-resistant caulking compound [30 TEX. ADMIN. CODE § 290.41(c)(3)(B), (J) and (K)].</p> <p>4. Failed to install a flow meter on the well pump discharge line [30 TEX. ADMIN. CODE § 290.41(c)(3)(N)].</p> <p>5. Failed to enclose the well in a well house with a lock or an intruder-resistant fence [30 TEX. ADMIN. CODE § 290.41(c)(3)(O)].</p> <p>6. Failed to submit "as-built" plans and specifications, prepared by a registered professional engineer well versed in the design and construction of public water systems, which describe the existing facilities, failed to provide well completion data for well No. 1, and failed to provide an accurate up-to-date map of the distribution system [30 TEX. ADMIN. CODE § 290.46(n)(1), (2) and (3)].</p> <p>7. Failed to keep on file and make available for Commission review the following records: monthly operating reports, a plant operations manual, and an up-to-date chemical and microbiological plan [30 TEX. ADMIN. CODE §§ 290.46(f), 290.42(l) and 290.121].</p> <p>8. Failed to provide a pressure tank capacity of 10 gallons per connection with a minimum requirement of 220 gallons [30 TEX. ADMIN. CODE § 290.45(c)(1)(A)(ii)].</p>		<p>4. Within 60 days:</p> <ul style="list-style-type: none"> a. Install around the well a concrete sealing block; b. Install a well casing vent; c. Install an intruder resistant fence around the well or enclose the well in a locked ventilated well house; d. Seal all wellheads with gaskets or a pliable crack-resistant sealing compound; and e. Secure a sanitary easement covering all property within 150 feet of the well location from adjacent landowners and record the deed at the county courthouse, as required. <p>5. Within 75 days, submit documentation demonstrating compliance with Ordering Provision nos. 4.a. through e.</p> <p>6. Within 90 days, submit "as-built" plans and specifications, prepared by a registered professional engineer well versed in the design and construction of public water system, describing the existing PWS Facility.</p> <p>7. Within 105 days, submit documentation demonstrating compliance with Ordering Provision no. 6.</p> <p>8. Within 180 days:</p> <ul style="list-style-type: none"> a. Provide a pressure tank capacity of a minimum of 220 gallons; and b. Submit an Affected Property Assessment Report ("APAR"), to the Executive Director for approval. <p>9. Within 195 days, submit documentation demonstrating compliance with Ordering Provision nos. 8.a. and b.</p>
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RESPONDENT NAME: JOSEPH GABER DBA CODY'S MARKET & MARINA, AND
VICTORIA GABER DBA CODY'S MARKET & MARINA
DOCKET NO.: 2006-0682-MLM-E

PST:

1. Failed to conduct effective manual or automatic inventory control procedures for all underground storage tanks at retail service stations [30 TEX. ADMIN. CODE § 334.48(c)].
2. Failed to perform an operability test on the cathodic protection system within three to six months after installation and at a subsequent frequency of at least once every three years [30 TEX. ADMIN. CODE § 334.49(c)(4)(C) and TEX. WATER CODE § 26.3475(d)].
3. Failed to monitor all tanks in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring), failed to monitor the piping for releases at least once every month (not to exceed 35 days between each monitoring) by using one or more methods of release detection or test the piping by means of a piping tightness test conducted in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory capable of detecting any release from the piping system of 0.1 gallons per hour when the piping pressure is at 150% of normal operating pressure, and failed to test the line leak detector at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A), (b)(2)(A)(ii)(I), and (b)(2)(A)(i)(III), and TEX. WATER CODE § 26.3475(a) and (c)(1)].
4. Failed to immediately investigate and confirm all suspected releases of regulated substances requiring reporting under 30 Tex. Admin. Code § 334.72 within 30 days or another procedure and schedule approved by the agency [30 TEX. ADMIN. CODE § 334.74].



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	05-Jul-2005	Screening	12-Jul-2005	EPA Due	
	PCW	12-Jan-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Joseph Gaber dba Cody's Market & Marina and Victoria Gaber dba Cody's Market & Marina
Reg. Ent. Ref. No.	RN101230654
Facility/Site Region	4-Dallas/Fort Worth <
Major/Minor Source	Minor Source <

CASE INFORMATION			
Enf./Case ID No.	5765	No. of Violations	8
Docket No.	2006-0682-MLM-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 7% Enhancement **Subtotals 2, 3, & 7**

Notes
The Respondents received one NOV with the same or similar violations to those violations addressed in this enforcement action and one NOV for violations that are not the same or similar to those addressed in this enforcement action.

Culpability No < 0% Enhancement **Subtotal 4**

Notes
The Respondents do not meet the culpability criteria.

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

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes
The Respondents are not yet in compliance.

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

Total EB Amounts	<input type="text" value="\$662"/>	<i>*Capped at the Total EB \$ Amount</i>
Approx. Cost of Compliance	<input type="text" value="\$7,000"/>	

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

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

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

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL 0% Reduction **Adjustment**

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

Notes
No deferral is recommended because this is not an expedited case.

PAYABLE PENALTY

Screening Date 12-Jul-2005

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Member 2002)

Case ID No. 5765

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101230654

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
Other	<i>Please Enter Yes or No</i>		
	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 7%

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

No <

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 Respondents received one NOV with the same or similar violations to those violations addressed in this enforcement action and one NOV for violations that are not the same or similar to those addressed in this enforcement action.

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

Screening Date 12-Jul-2005 **Docket No.** 2006-0682-MLM-E **PCW**
Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Member 2002)
Case ID No. 5765 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN101230654
Media [Statute] Public Water Supply
Enf. Coordinator Rebecca Clausewitz
Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code §§ 290.42(b)(1), 290.46(d)(2)(A),
290.110(d)(3)(C)(ii) and 290.46(h)
Secondary Rule Cite(s)

Violation Description
 Failed to provide disinfection equipment to maintain a free chlorine residual of 0.2 milligrams per liter (mg/L) throughout the distribution system at all times, failed to test the chlorine residual on water collected from various locations within the distribution system using a test kit which employs a diethyl-p-phenylenediamine (DPD) indicator and failed to maintain a supply of calcium hypochlorite disinfectant on hand for use when making repairs, setting meters and disinfecting new mains prior to placing them in service. Specifically, during the investigation, a chlorine residual test conducted revealed a chlorine residual of 0.0 mg/L and it was documented that the water system did not have any chlorination equipment installed at the facility and the water system did not possess a DPD indicator to test the chlorine residual or have a supply of calcium hypochlorite.

Base Penalty \$1,000

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

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent 25%
	Potential	X			

>> **Programmatic Matrix**

		Falsification	Major	Moderate	Minor	
						Percent

Matrix Notes
 Failing to provide disinfection equipment and test the chlorine residual in the distribution system with a proper chlorine test kit may allow a significant amount of undetected contaminants which would not exceed levels that are protective of human health enter be distributed for human consumption.

Adjustment -\$750

Base Penalty Subtotal \$250

Violation Events

Number of Violation Events 3

<i>mark only one use a small x</i>	daily	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$750

Three monthly events are recommended based on documentation of the violation during the May 5, 2005 investigation to the screening date of July 12, 2005.

Economic Benefit (EB) for this violation

Estimated EB Amount \$132

Statutory Limit Test

Violation Final Penalty Total \$803

This violation Final Assessed Penalty (adjusted for limits) \$803

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
Case ID No. 5765
Reg. Ent. Reference No. RN101230654
Media [Statute] Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment	\$1,000	05-May-2005	01-Jun-2006	1.1	\$4	\$72	\$75
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 install chlorination equipment to chlorinate the water and to keep a supply of calcium hypochlorite. Date required is the investigation date and final date is 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	\$50	05-May-2005	01-Jun-2006	1.1	\$3	\$54	\$56
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 Estimated cost to perform chlorine residual tests on water collected at various points in the distribution system at least once every seven days using a DPD indicator. Date required is the investigation date and the final date is the estimated date of compliance.

Approx. Cost of Compliance

TOTAL

Screening Date 12-Jul-2005

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Member 2002)

Case ID No. 5765

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101230654

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Failed to secure a sanitary control easement for well No. 1. Specifically, during the investigation, Mr. Joseph Gaber stated that he did not have an easement because he owned ten acres of land surrounding the well; however, Mr. Gaber was unable to provide the deed to the property he claimed to own.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

Percent

>> Programmatic Matrix

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

Percent

Matrix Notes

Failure to secure a sanitary easement may expose the wells to an insignificant amount of contaminants which would not exceed levels that are protective of human health.

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small 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 based on documentation of the violation during the May 5, 2005 investigation.

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 Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
 Case ID No. 5765
 Reg. Ent. Reference No. RN101230654
 Media [Statute] Public Water Supply
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	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	\$100	05-May-2005	01-Jul-2006	1.2	\$6	n/a	\$6
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 secure a sanitary control easement and file the easement in the county courthouse. Date required is the investigation date and the final date is 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 TOTAL

Screening Date 12-Jul-2005 **Docket No.** 2006-0682-MLM-E **PCW**
Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Member 2002)
Case ID No. 5765 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN101230654
Media [Statute] Public Water Supply
Enf. Coordinator Rebecca Clausewitz
Violation Number
Primary Rule Cite(s)
Secondary Rule Cite(s)

Violation Description
 Failed to provide a well casing 18 inches above the elevation of the finished floor of the pump house or natural ground surface, failed to provide a concrete sealing block that extends at least three feet from the exterior well casing in all directions, failed to provide a well casing vent with a 16-mesh or finer corrosion resistant screen and failed to seal the well head with the use of gaskets or a pliable crack-resistant caulking compound. Specifically, during the investigation, it was documented that the well casing was measured at approximately five inches from the ground, the well did not have a concrete sealing block, the well did not have a casing vent and the well head was not sealed.

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 checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

>> **Programmatic Matrix**

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

Matrix Notes
 Human health or the environment could be exposed to a significant amount of contaminants that exceed levels that are protective of human health as a result of the violation.

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	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

Three monthly events are recommended based on documentation of the violation during the May 5, 2005 investigation to the screening date of July 12, 2005.

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 Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
 Case ID No. 5765
 Reg. Ent. Reference No. RN101230654
 Media [Statute] Public Water Supply
 Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$1,500	05-May-2005	30-Sep-2006	1.4	\$7	\$141	\$148
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 a well casing casing 18 inches above the elevation of the finished floor of the pump house or natural ground surface, a concrete sealing block that extends at least three feet from the exterior well casing in all directions, a well casing vent with a 16-mesh or finer corrosion resistant screen and seal the well head with the use of gaskets or a pliable crack-resistant caulking compound. Date required is the investigation date and final date is 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

TOTAL

Screening Date 12-Jul-2005 **Docket No.** 2006-0682-MLM-E **PCW**
Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Member 2002)
Case ID No. 5765 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN101230654
Media [Statute] Public Water Supply
Enf. Coordinator Rebecca Clausewitz
Violation Number
Primary Rule Cite(s)
Secondary Rule 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="5%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	

>> **Programmatic Matrix**

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

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	<i>daily</i>	<input type="text"/>
	<i>monthly</i>	<input type="text"/>
	<i>quarterly</i>	<input type="text"/>
	<i>semiannual</i>	<input type="text"/>
	<i>annual</i>	<input type="text"/>
	<i>single event</i>	<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 Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
Case ID No. 5765
Reg. Ent. Reference No. RN101230654
Media [Statute] Public Water Supply
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime	EB
						Costs	Amount
Delayed Costs							
Equipment	\$250	05-May-2005	01-Jun-2006	1.1	\$1	\$18	\$19
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 for a flow meter for the well. Date required is the investigation date and the final date is 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 **\$250** **TOTAL \$19**

Screening Date 12-Jul-2005

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Member 2002

Case ID No. 5765

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101230654

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 5

Primary Rule Cite(s) 30 Tex. Admin. Code § 290.41(c)(3)(O)

Secondary Rule Cite(s)

Violation Description
 Failed to enclose the well in a well house with a lock or an intruder-resistant fence. Specifically, during the investigation, it was documented that the well was enclosed by a circular concrete slab with a concrete lid on top of the slab that was not locked.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	X			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent

Matrix Notes
 Failure to provide a intruder-resistant fence around the well site or a ventilated well house may result in vandalism and contamination of the water system.

Adjustment -\$750

Base Penalty Subtotal \$250

Violation Events

Number of Violation Events 3

mark only one use a small x	daily	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$750

Three monthly events are recommended based on documentation of the violation during the May 5, 2005 investigation to the screening date of July 12, 2005.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$49

Violation Final Penalty Total \$803

This violation Final Assessed Penalty (adjusted for limits) \$803

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
 Case ID No. 5765
 Reg. Ent. Reference No. RN101230654
 Media [Statute] Public Water Supply
 Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment	\$500	05-May-2005	30-Sep-2006	1.4	\$2	\$47	\$49
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 install a intruder-resistant fence around the well. Date required is the investigation date and the final date is 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 TOTAL

Screening Date 12-Jul-2005

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Member 2002)

Case ID No. 5765

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101230654

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 6

Primary Rule Cite(s) 30 Tex. Admin. Code § 290.46(n)(1), (2) and (3)

Secondary Rule Cite(s)

Violation Description Failed to submit "as-built" plans and specifications that describe the existing facilities that are prepared by a registered professional engineer well versed in the design and construction of public water systems, failed to provide well completion data for well No. 1 and failed to provide an accurate up-to-date map of the distribution system.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
		X			Percent 10%

Matrix Notes The Respondent failed to comply with 100 percent of this rule.

Adjustment -\$900

Base Penalty Subtotal \$100

Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
single event	X	

Violation Base Penalty \$100

One single event is recommended based on documentation of the violation during the May 5, 2005 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$188

Violation Final Penalty Total \$107

This violation Final Assessed Penalty (adjusted for limits) \$107

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
 Case ID No. 5765
 Reg. Ent. Reference No. RN101230654
 Media [Statute] Public Water Supply
 Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	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)				0.0	\$0	\$0	\$0
Engineering/construction	\$2,500	05-May-2005	01-Jun-2006	1.1	\$9	\$179	\$188
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 secure the services of a Professional Engineer to develop and submit "as-built" plans and specifications of the water system which would include well completion data and a map of the distribution system. Date required is the investigation date and final date is the estimated date of compliance.

Item	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 **\$2,500**

TOTAL \$188

Screening Date 12-Jul-2005 **Docket No.** 2006-0682-MLM-E **PCW**
Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Member 2002)
Case ID No. 5765 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN101230654
Media [Statute] Public Water Supply
Enf. Coordinator Rebecca Clausewitz
Violation Number
Primary Rule Cite(s)
Secondary Rule 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"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

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

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	daily	<input type="text"/>
	monthly	<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 Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
Case ID No. 5765
Reg. Ent. Reference No. RN101230654
Media [Statute] Public Water Supply
Violation No. 7

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	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)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$100	05-May-2005	01-Jun-2006	1.1	\$5	n/a	\$5
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 develop and maintain monthly operation reports, a plant operations manual and an up-to-date microbiological monitoring plan. Date required is the investigation date and final date is 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

TOTAL

Screening Date 12-Jul-2005

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Member 2002)

Case ID No. 5765

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101230654

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 8

Primary Rule Cite(s) 30 Tex. Admin. Code § 290.45(c)(1)(A)(ii)

Secondary Rule Cite(s)

Violation Description Failed to provide a pressure tank capacity of 10 gallons per connection with a minimum requirement of 220 gallons. Specifically, during the investigation, it was documented that the pressure tank capacity provided was 81 gallons. The water system is required to maintain a minimum pressure tank capacity of 220 gallons.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Inadequate pressure tank capacity (63% deficient) could result in water outages and back flow problems and may allow a significant amount of contaminants to enter the water supply which would exceed levels that are protective of human health.

Adjustment -\$750

Base Penalty Subtotal \$250

Violation Events

Number of Violation Events 3

mark only one use a small x	daily	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$750

Three monthly events are recommended based on documentation of the violation during the May 5, 2005 investigation to the screening date of July 12, 2005.

Economic Benefit (EB) for this violation

Estimated EB Amount \$116

Statutory Limit Test

Violation Final Penalty Total \$803

This violation Final Assessed Penalty (adjusted for limits) \$803

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
 Case ID No. 5765
 Reg. Ent. Reference No. RN101230654
 Media [Statute] Public Water Supply
 Violation No. 8

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment	\$1,000	05-May-2005	31-Dec-2006	1.7	\$6	\$111	\$116
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 provide adequate pressure tank capacity. Date required is the investigation date and the final date is 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 TOTAL



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

TCEQ

DATES	Assigned	9-Jan-2007	Screening	11-Jan-2007	EPA Due	
	PCW	12-Jan-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Joseph Gaber dba Cody's Market & Marina and Victoria Gaber dba Cody's Market & Marina
Reg. Ent. Ref. No.	RN101230654
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	5765	No. of Violations	4	
Docket No.	2006-0682-MLM-E	Order Type	Findings	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Rebecca Clausewitz	
Multi-Media		EC's Team	2	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$15,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 4% Enhancement Subtotals 2, 3, & 7 \$620

Notes: The Respondents received two NOV's for violations that are not similar to those violations addressed in this enforcement action.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes: Respondents do not meet the culpability criteria.

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

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondents are not yet in compliance.

Total EB Amounts \$1,813 0% Enhancement* Subtotal 6 \$0
Approx. Cost of Compliance \$2,075 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$16,120

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment \$0

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

Notes:

Final Penalty Amount \$16,120

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$16,120

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 for Findings Orders.

PAYABLE PENALTY \$16,120

Screening Date 11-Jan-2007

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria C

Policy Revision 2 (September 2002)

Case ID No. 5765

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101230654

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rebecca Clausewitz

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	2	4%
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%
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)

4%

>> Repeat Violator (Subtotal 3)

No

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 Respondents received two NOVs for violations that are not similar to those violations addressed in this enforcement action.

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

4%

Screening Date 11-Jan-2007

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dt

Policy Revision 2 (September 2002)

Case ID No. 5765

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101230654

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rebecca Clausewitz

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.48(c)

Violation Description

Failed to conduct effective manual or automatic inventory control procedures for all underground storage tanks at retail service stations. Specifically, during the investigation, it was documented that the facility failed to record inventory to the nearest 1/8 of an inch after manually gauging the tanks.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to properly conduct effective inventory control procedures could result in an undetected release of a significant amount of petroleum product that would exceed levels protective of human health or environmental receptors.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2

51 Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
single event		

Violation Base Penalty \$5,000

Two monthly events are recommended for the time frame from the date of the investigation, November 21, 2006, to the screening date, January 11, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$5,200

This violation Final Assessed Penalty (adjusted for limits) \$5,200

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina

Case ID No. 5765

Reg. Ent. Reference No. RN101230654

Media Petroleum Storage Tank

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
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

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)	\$50	21-Nov-2006	30-Jun-2007	0.6	\$2	n/a	\$2

Notes for DELAYED costs

Estimated cost to accurately conduct inventory control. Date required is the investigation date. Final date is 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

\$50

TOTAL

\$2

Screening Date 11-Jan-2007

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba

Policy Revision 2 (September 2002)

Case ID No. 5765

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101230654

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rebecca Clausewitz

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.49(c)(4)(C) and Tex Water Code § 26.3475(d)

Violation Description Failed to perform an operability test on the cathodic protection system within three to six months after installation and at a subsequent frequency of at least once every three years. Specifically, during the investigation, it was documented that an operability test had not been performed on the cathodic protection system within the past three years.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Release	Major	Moderate	
Actual				25%
Potential	x			

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes Failure to perform an operability test on the cathodic protection system could result in an undetected release of a significant amount of petroleum product that would exceed levels protective of human health or environmental receptors.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 9

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One monthly event is recommended for the time frame from the date of the investigation, November 21, 2006, to the date of compliance, November 30, 2006.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,796

Violation Final Penalty Total \$2,600

This violation Final Assessed Penalty (adjusted for limits) \$2,600

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina

Case ID No. 5785

Reg. Ent. Reference No. RN101230654

Media Petroleum Storage Tank

Violation No. 2

Percent Interest	Years of Depreciation
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]				0.0	\$0	\$0	\$0
Other (as needed)	\$1,500	21-Nov-2003	30-Nov-2006	3.9	\$296	\$1,500	\$1,796

Notes for AVOIDED costs

Estimated cost to perform an operability test. Date required is three years prior to the investigation date. Final date is the date an operability test was completed.

Approx. Cost of Compliance

\$1,500

TOTAL

\$1,796

Screening Date 11-Jan-2007

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba

Policy Revision 2 (September 2002)

Case ID No. 5765

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101230654

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rebecca Clausewitz

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 334.50(b)(1)(A), 334.50(b)(2)(A)(ii)(I) and (b)(2)(A)(i)(III) and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description

Failed to monitor all tanks in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring), failed to monitor the piping for releases at least once every month (not to exceed 35 days between each monitoring) by using one or more methods of release detection or test the piping by means of a piping tightness test conducted in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory that shall be capable of detecting any release from the piping system of 0.1 gallons per hour when the piping pressure is at 150% of normal operating pressure and failed to test the line leak detector at least once per year for performance and operational reliability.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to perform release detection on the piping could expose human health or the environment to significant amounts of petroleum products that would exceed levels that are protective of human health or environmental receptors.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 2 51 Number of violation days

mark only one with an x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
single event		

Violation Base Penalty \$5,000

Two monthly events are recommended for the time frame from the date of the investigation, November 21, 2006, to the screening date, January 11, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$15

Violation Final Penalty Total \$5,200

This violation Final Assessed Penalty (adjusted for limits) \$5,200

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
Case ID No. 5765
Reg. Ent. Reference No. RN101230654
Media Petroleum Storage Tank
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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)	\$500	21-Nov-2006	30-Jun-2007	0.6	\$15	n/a	\$15

Notes for DELAYED costs

Estimated cost to perform a piping tightness test, test the line leak detectors and monitor the tanks for releases. Date required is the investigation date. Final date is the estimated date of compliance for monitoring the tanks for releases. On November 30, 2006, a piping tightness test was completed and the line leak detectors were tested.

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

\$500

TOTAL

\$15

Screening Date 11-Jan-2007

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba

Policy Revision 2 (September 2002)

Case ID No. 5765

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101230654

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rebecca Clausewitz

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 334.74

Violation Description Failed to immediately investigate and confirm all suspected releases of regulated substances requiring reporting under 30 Tex. Admin. Code § 334.72 within 30 days or another procedure and schedule approved by the agency.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

Matrix Notes The Respondent failed to comply with 100 percent of this rule.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 3 90 Number of violation days

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$3,000

Three monthly events are recommended based on the date the respondent was required to investigate the suspected release, August 30, 2006, to the date of compliance, November 30, 2006.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$3,120

This violation Final Assessed Penalty (adjusted for limits) \$3,120

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina

Case ID No. 5765

Reg. Ent. Reference No. RN101230654

Media Petroleum Storage Tank

Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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)	\$25	30-Aug-2006	30-Nov-2006	0.3	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to take the appropriate steps to confirm and report a suspected release. Date required is 30 days after monthly reconciliation reports indicated a suspected release. Final date is the date the Facility reported test results that confirm no release was detected.

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

\$25

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator: CN602870552 GABER, JOSEPH Classification: AVERAGE Rating: 3.200
Regulated Entity: RN101230654 CODYS MARKET & MARINA Classification: Site Rating: N/A
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1840144
PETROLEUM STORAGE TANK REGISTRATION 6615
Location: 5105 TIN TOP RD, Parker County Rating Date: 9/1/04 Repeat Violator: NO
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: July 27, 2005
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 27, 2000 to July 27, 2005

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Sandy VanCleave Phone: (512) 239-0667

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? Yes
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 judgments, and consent decrees of the state of Texas and the federal government.

N/A

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

N/A

C. Chronic excessive emissions events.

N/A

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

- 1 06/24/2003 (277584)
- 2 06/27/2005 (381316)
- 3 04/12/2002 (IE0018002001001)
- 4 11/12/2004 (291235)

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

1. Date: 06/24/2003 (277584)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 37, SubChapter I 37.815(a)[G]
30 TAC Chapter 37, SubChapter I 37.815(b)[G]
Description: Failure to provide acceptable financial assurance
2. Date: 03/19/2001
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapterD 290.46(e)(1)
Description: Failure to have your system under the direct supervision of a certified water works operator at all times.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)
Description: Failure to provide a sanitary control easement for the well.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(B)
Description: Failure to provide a well casing which is a minimum 18 inches above the ground surface.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(N)
Description: Failure to provide a flow meter on the well discharge line.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(M)
Description: Failure to provide a sampling tap on the well.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(J)
Description: Failure to provide a concrete sealing block on the well.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)
Description: Failure to protect the well with an intruder resistant fence or locked well house.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(K)
Description: Failure to provide a screened casing vent on the well.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(3)(A)
Description: Failure to provide any form of disinfection equipment.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(2)
Description: Failure to provide disinfection prior to storage.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(d)(2)(A)
Description: Failure to maintain proper chlorine residual.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(A)
Description: Failure to provide well drillers log for the well.

Self Report? NO Classification: Major
Citation: 30 TAC Chapter 290, SubChapter F 290.106(a)
Description: Failure to collect and submit samples for bacteriological analysis.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)
Description: Failure to complete annual tank inspections.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.110(d)(3)(D)
Description: Failure to provide a DPD Chlorine test kit.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(K)
Description: Failure to keep the well head sealed at the entry point of pump wiring.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.45(d)(2)(A)(ii)
Description: Failure to provide a minimum pressure tank capacity of 220 gallons.

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

Compliance History

Customer/Respondent/Owner-Operator: CN601506298 GABER, VICTORIA Classification: AVERAGE Rating: 3.200

Regulated Entity: RN101230654 CODYS MARKET & MARINA Classification: Site Rating: N/A

ID Number(s):
PETROLEUM STORAGE TANK REGISTRATION 6615
PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1840144

Location: 5105 TIN TOP RD, Parker County Rating Date: 9/1/04 Repeat Violator: NO

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: July 27, 2005

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 27, 2000 to July 27, 2005

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Sandy VanCleave Phone: (512) 239-0667

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? Yes
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

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

N/A

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

N/A

C. Chronic excessive emissions events.

N/A

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

- 1 06/24/2003 (277584)
- 2 06/27/2005 (381316)
- 3 04/12/2002 (IE0018002001001)
- 4 11/12/2004 (291235)

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

Date: 06/24/2003 (277584)

Self Report? NO

Classification: Moderate

Citation:

30 TAC Chapter 37, SubChapter I 37.815(a)[G]

30 TAC Chapter 37, SubChapter I 37.815(b)[G]

Description: Failure to provide acceptable financial assurance

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(e)(1)
Description: Failure to have your system under the direct supervision of a certified water works operator at all times.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)
Description: Failure to provide a sanitary control easement for the well.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(B)
Description: Failure to provide a well casing which is a minimum 18 inches above the ground surface.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(N)
Description: Failure to provide a flow meter on the well discharge line.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(M)
Description: Failure to provide a sampling tap on the well.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(J)
Description: Failure to provide a concrete sealing block on the well.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)
Description: Failure to protect the well with an intruder resistant fence or locked well house.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(K)
Description: Failure to provide a screened casing vent on the well.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(3)(A)
Description: Failure to provide any form of disinfection equipment.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(2)
Description: Failure to provide disinfection prior to storage.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(d)(2)(A)
Description: Failure to maintain proper chlorine residual.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(A)
Description: Failure to provide well drillers log for the well.

Self Report? NO Classification: Major
Citation: 30 TAC Chapter 290, SubChapter F 290.106(a)
Description: Failure to collect and submit samples for bacteriological analysis.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)
Description: Failure to complete annual tank inspections.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.110(d)(3)(D)
Description: Failure to provide a DPD Chlorine test kit.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(K)
Description: Failure to keep the well head sealed at the entry point of pump wiring.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.45(d)(2)(A)(ii)
Description: Failure to provide a minimum pressure tank capacity of 220 gallons.

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
JOSEPH GABER DBA CODY'S
MARKET & MARINA, AND
VICTORIA GABER DBA CODY'S
MARKET & MARINA;
RN101230654

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2006-0682-MLM-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Second Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondents made the subject of this Order are Joseph Gaber dba Cody's Market & Marina ("Mr. Gaber") and Victoria Gaber dba Cody's Market & Marina ("Ms. Gaber") (collectively "the Gabers").

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

FINDINGS OF FACT

1. The Gabers own and operate a public water system located at 5105 Tin Top Road, Weatherford, Parker County, Texas (the "PWS Facility"). The Facility has 1 service connection and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water supply system as defined in 30 TEX. ADMIN. CODE § 290.38(47).
2. The Gabers also own and operate a convenience store with retail sales of gasoline located at 5105 Tin Top Road, Weatherford, Parker County, Texas (the "UST Facility"). The Gaber's five underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The Gaber's USTs contain a regulated petroleum substance as defined in the rules of the Commission.

3. During an investigation conducted on May 5, 2005, a TCEQ Dallas/Fort Worth Regional Office investigator documented that the Gabers:
 - a. Failed to provide disinfection equipment to maintain a free chlorine residual of 0.2 milligrams per liter (mg/L) throughout the distribution system at all times, failed to test the chlorine residual on water collected from various locations within the distribution system using a test kit which employs a diethyl-p-phenylenediamine (DPD) indicator, and failed to maintain a supply of calcium hypochlorite disinfectant on hand for use when making repairs, setting meters and disinfecting new mains prior to placing them in service. Specifically, during the investigation, a chlorine residual test conducted revealed a chlorine residual of 0.0 mg/L, the water system did not have any chlorination equipment installed at the facility, the water system did not possess a DPD indicator to test the chlorine residual, and did not have a supply of calcium hypochlorite;
 - b. Failed to secure a sanitary control easement for well No. 1. Specifically, during the investigation Mr. Gaber stated that he did not have an easement because he owned the ten acres of land surrounding the well, however, Mr. Gaber was unable to provide the deed to or otherwise prove ownership of the ten surrounding acres;
 - c. Failed to provide a well casing 18 inches above the elevation of the finished floor of the pump house or natural ground surface, failed to provide a concrete sealing block that extends at least three feet from the exterior well casing in all directions, failed to provide a well casing vent with a 16-mesh or finer corrosion resistant screen, and failed to seal the well head with the use of gaskets or a pliable crack-resistant caulking compound. Specifically, during the investigation it was documented that the well casing was measured at approximately five inches from the ground, the well did not have a concrete sealing block, the well did not have a casing vent, and the well head was not sealed;
 - d. Failed to install a flow meter on the well pump discharge line;
 - e. Failed to enclose the well in a well house with a lock or an intruder-resistant fence. Specifically, during the investigation it was documented that the well was enclosed by a circular concrete slab with an unlocked concrete lid on top of the slab;
 - f. Failed to submit "as-built" plans and specifications, prepared by a registered professional engineer versed in the design and construction of public water systems, which describe the existing facilities, failed to provide well completion data for well No. 1, and failed to provide an accurate up-to-date map of the distribution system;
 - g. Failed to keep on file and make available for Commission review the following

- i. Performed an operability test on the cathodic protection system, in accordance with 30 TEX. ADMIN. CODE § 334.49;
 - ii. Implemented a release detection method for the UST Facility, in accordance with 30 TEX. ADMIN. CODE § 334.50; and
 - ii. Begun conducting effective manual or automatic inventory control procedures for all USTs, in accordance with 30 TEX. ADMIN. CODE § 334.48(c).
7. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Joseph Gaber and Victoria Gaber, dba Cody's Market & Marina" (the "EDPRP") in the TCEQ Chief Clerk's office on September 8, 2006. By letter dated September 8, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served the Gabers with notice of the EDPRP. According to the return receipt "green card," the Gabers received notice of the EDPRP on September 9, 2006, as evidenced by the signature on the card.
8. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Joseph Gaber and Victoria Gaber, dba Cody's Market & Marina" (the "EDFARP") in the TCEQ Chief Clerk's office on December 11, 2006. By letter dated December 11, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served the Gabers with notice of the EDFARP. According to the return receipt "green card," the Gabers received notice of the EDFARP on December 12, 2006, as evidenced by the signature on the card.
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10. More than 20 days have elapsed since the Gabers received notice of the EDPRP, the EDFARP, and the EDSARP, provided by the Executive Director. The Gabers failed to file an answer to the EDPRP, the EDFARP, and the EDSARP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, the Gabers are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., the Gabers failed to provide disinfection equipment to maintain a free chlorine residual of 0.2 mg/L throughout the distribution system at all times, failed to test the chlorine residual on water collected from various locations within the distribution system using a test kit which employs a DPD indicator, and failed to maintain a supply of calcium hypochlorite disinfectant on hand for use when making repairs, setting meters and disinfecting new mains prior to placing them in service, in violation of 30 TEX. ADMIN. CODE §§ 290.42(b)(1), 290.46(d)(2)(A), 290.110(d)(3)(C)(ii) and 290.46(h).
3. As evidenced by Finding of Fact No. 3.b., the Gabers failed to secure a sanitary control easement for well No. 1, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(1)(F).
4. As evidenced by Finding of Fact No. 3.c., the Gabers failed to provide a well casing 18 inches above the elevation of the finished floor of the pump house or natural ground surface, failed to provide a concrete sealing block that extends at least three feet from the exterior well casing in all directions, failed to provide a well casing vent with a 16-mesh or finer corrosion resistant screen, and failed to seal the well head with the use of gaskets or a pliable crack-resistant caulking compound, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(B), (J) and (K).
5. As evidenced by Finding of Fact No. 3.d., the Gabers failed to install a flow meter on the well pump discharge line, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(N).
6. As evidenced by Finding of Fact No. 3.e., the Gabers failed to enclose the well in a well house with a lock or an intruder-resistant fence, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(O).
7. As evidenced by Finding of Fact No. 3.f., the Gabers failed to submit "as-built" plans and specifications, prepared by a registered professional engineer well versed in the design and construction of public water systems, which describe the existing facilities, failed to provide

- well completion data for well No. 1, and failed to provide an accurate up-to-date map of the distribution system, in violation of 30 TEX. ADMIN. CODE § 290.46(n)(1), (2) and (3).
8. As evidenced by Finding of Fact No. 3.g., the Gabers failed to keep on file and make available for Commission review the following records: monthly operating reports, a plant operations manual, and an up-to-date chemical and microbiological plan, in violation of 30 TEX. ADMIN. CODE §§ 290.46(f), 290.42(l) and 290.121.
 9. As evidenced by Finding of Fact No. 3.h., the Gabers failed to provide a pressure tank capacity of 10 gallons per connection with a minimum requirement of 220 gallons, in violation of 30 TEX. ADMIN. CODE § 290.45(c)(1)(A)(ii).
 10. As evidenced by Finding of Fact No. 4.a., the Gabers failed to conduct effective manual or automatic inventory control procedures for all underground storage tanks at retail service stations, in violation of 30 TEX. ADMIN. CODE § 334.48(c).
 11. As evidenced by Finding of Fact No. 4.b., the Gabers failed to perform an operability test on the cathodic protection system within three to six months after installation and at a subsequent frequency of at least once every three years, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(4)(C) and TEX. WATER CODE § 26.3475(d).
 12. As evidenced by Finding of Fact No. 4.c., the Gabers failed to monitor all tanks in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring), failed to monitor the piping for releases at least once every month (not to exceed 35 days between each monitoring) by using one or more methods of release detection or test the piping by means of a piping tightness test conducted in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory capable of detecting any release from the piping system of 0.1 gallons per hour when the piping pressure is at 150% of normal operating pressure, and failed to test the line leak detector at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE §§ 334.50(b)(1)(A), (b)(2)(A)(ii)(I), and (b)(2)(A)(i)(III), and TEX. WATER CODE § 26.3475(a) and (c)(1).
 13. As evidenced by Finding of Fact No. 4.d., the Gabers failed to immediately investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TEX. ADMIN. CODE § 334.72 within 30 days or another procedure and schedule approved by the agency, in violation of 30 TEX. ADMIN. CODE § 334.74.
 14. As evidenced by Finding of Fact Nos. 7 through 9, the Executive Director timely served the Gabers with proper notice of the EDPRP, the EDFARP, and the EDSARP, as required by TEX. WATER CODE § 7.055, TEX. HEALTH & SAFETY CODE § 341.049, and 30 TEX. ADMIN. CODE § 70.104(a).

15. As evidenced by Finding of Fact No. 10, the Gabers failed to file a timely answer to the EDPRP, the EDFARP, and the EDSARP, as required by TEX. WATER CODE § 7.056, TEX. HEALTH & SAFETY CODE § 341.049, and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057, TEX. HEALTH & SAFETY CODE § 341.049, and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against the Gabers and assess the penalty recommended by the Executive Director.
16. Pursuant to TEX. WATER CODE § 7.051 and TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Gabers 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.
17. An administrative penalty in the amount of nineteen thousand six hundred fifty-one dollars (\$19,651.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053 and TEX. HEALTH & SAFETY CODE § 341.049.
18. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.
19. Pursuant to 30 TEX. ADMIN. CODE § 334.8(c)(6), the Commission has authority to revoke the Gabers's UST delivery certificate if the Commission finds that good cause exists.
20. Good cause for revocation of the Gabers's UST delivery certificate exists as justified by Findings of Fact Nos. 7 through 10, and Conclusions of Law Nos. 14 and 15.

ORDERING PROVISIONS

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

1. The Gabers are assessed an administrative penalty in the amount of nineteen thousand six hundred fifty-one dollars (\$19,651.00) for violations of the Texas Water Code, the Texas Health & Safety Code, and the rules of the TCEQ. The payment of this administrative penalty and the Gabers's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective

date of this Order and shall be sent with the notation "Re: Joseph Gaber dba Cody's Market & Marina, and Victoria Gaber dba Cody's Market & Marina; Docket No. 2006-0682-MLM-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. The Gabers' UST delivery certificate is revoked immediately upon the effective date of this Order. The Gabers may submit an application for a new delivery certificate only after the Gabers have complied with all of the requirements of this Order.
3. Within 10 days after the effective date of this Order, the Gabers shall send the UST delivery certificate to:

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

4. The Gabers shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, the Gabers shall:
 - i. Provide disinfection equipment and ensure that the equipment is operated to maintain a free chlorine residual of 0.02 mg/L, as required by 30 TEX. ADMIN. CODE §§ 290.42(b)(1) and 290.46(d)(2)(A);
 - ii. Begin conducting and recording the results of disinfectant residual tests taken at representative locations in the distribution system using a test kit which employs a DPD indicator, as required by 30 TEX. ADMIN. CODE § 290.110(d)(3)(C)(ii);
 - iii. Implement procedures to ensure that a supply of calcium hypochlorite disinfectant is kept on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service, as required by 30 TEX. ADMIN. CODE § 290.46(h);

- iv. Install a flow meter on the well pump discharge line, as required by 30 TEX. ADMIN. CODE § 290.41(c)(3)(N);
 - v. Begin maintaining monthly operation reports for the PWS Facility, as required by 30 TEX. ADMIN. CODE § 290.46(f);
 - vi. Compile a plant operations manual for the PWS Facility, as required by 30 TEX. ADMIN. CODE §§ 290.42(1); and
 - vii. Develop a written Sample Siting Plan for the PWS Facility showing bacteriological sampling points on the systems map, as required by 30 TEX. ADMIN. CODE § 290.121.
- b. Within 60 days after the effective date of this Order, the Gabers shall:
- i. Install around the well a concrete sealing block compliant with 30 TEX. ADMIN. CODE § 290.41(c)(3)(J);
 - ii. Install a well casing vent compliant with 30 TEX. ADMIN. CODE § 290.41(c)(3)(K);
 - iii. Install an intruder resistant fence around the well or enclose the well in a locked ventilated well house, as required by 30 TEX. ADMIN. CODE § 290.41(c)(3)(O);
 - iv. Seal all wellheads with gaskets or a pliable crack-resistant sealing compound, as required by 30 TEX. ADMIN. CODE § 290.41(c)(3)(K); and
 - v. Secure a sanitary easement covering all property within 150 feet of the well location from adjacent landowners and record the deed at the county courthouse, as required by 30 TEX. ADMIN. CODE § 290.41(c)(1)F).
- c. Within 90 days after the effective date of this Order, the Gabers shall submit "as-built" plans and specifications, prepared by a registered professional engineer well versed in the design and construction of public water system, describing the existing PWS Facility. The plans shall include well completion data for well No. 1 and an accurate up-to-date map of the distribution system, as required by 30 TEX. ADMIN. CODE § 290.46(n)(1), (2) and (3). These plans and specifications shall be submitted to:

Rate Analysis & Plan Review Team, Utilities & Districts Section

Water Supply Division, MC 153
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- d. Within 180 days after the effective date of this Order, the Gabers shall:
- i. Provide a pressure tank capacity of a minimum of 220 gallons, as required by 30 TEX. ADMIN. CODE § 290.45(c)(1)(A)(ii); and
 - ii. Submit an Affected Property Assessment Report ("APAR"), pursuant to 30 TEX. ADMIN. CODE § 350.91, to the Executive Director for approval. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program found in 30 TEX. ADMIN. CODE ch. 350 which may include: plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30 TEX. ADMIN. CODE § 350.33(l)); and Institutional Controls under Subchapter F.
- e. The Gabers shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with these Ordering Provisions, as follows:
- i. Within 45 days after the effective date of this Order, the Gabers shall submit written certification to demonstrate compliance with Ordering Provision Nos. 4.a.i. through 4.a.vii.
 - ii. Within 75 days after the effective date of this Order, the Gabers shall submit written certification to demonstrate compliance with Ordering Provision Nos. 4.b.i. through 4.b.v.
 - iii. Within 105 days after the effective date of this Order, the Gabers shall submit written certification to demonstrate compliance with Ordering Provision No. 4.c.
 - iv. Within 195 days after the effective date of this Order, the Gabers shall submit written certification to demonstrate compliance with Ordering Provision Nos. 4.d.i. and d.ii.

Each 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 Gabers shall submit the written certifications and copies of documentation necessary to demonstrate compliance 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:

Sid Slocum, Water Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Drive
Fort Worth, Texas 76118-6951

5. All relief not expressly granted in this Order is denied.
6. The provisions of this Order shall apply to and be binding upon the Gabers, who are ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
7. If the Gabers fail to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Gabers' failure to comply is not a violation of this Order. The Gabers shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Gabers shall notify the Executive Director within seven days after they become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
8. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Gabers shall be made in writing to

the Executive Director. Extensions are not effective until the Gabers receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

9. 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 Gabers if the Executive Director determines that the Gabers have not complied with one or more of the terms or conditions in this Order.
10. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
11. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF LENA ROBERTS

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

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

“The Executive Director filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Joseph Gaber and Victoria Gaber, dba Cody’s Market & Marina” (the “EDPRP”) in the TCEQ Chief Clerk’s office on September 8, 2006. By letter dated September 8, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served the Gabers with notice of the EDPRP. According to the return receipt “green card,” the Gabers received notice of the EDPRP on September 9, 2006, as evidenced by the signature on the card.

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Lena Roberts, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 13th day of November, A.D., 2007.



Notary Signature