

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-2018-PWS-E **TCEQ ID:** RN101193274 **CASE NO.:** 35070

RESPONDENT NAME: City of Midway

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: City of Midway Public Water Supply, 12250 State Highway 21 East, Midway, Madison County</p> <p>TYPE OF OPERATION: Municipal public water supply</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 19, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Rebecca Clausewitz, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4012; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: The Honorable Patrick Wakefield, Mayor, City of Midway, P.O. Box 227, Midway, Texas 75852 Ms. Sabra S. Ferguson, City Secretary, City of Midway, P.O. Box 227, Midway, Texas 75852 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: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: September 25, 2007</p> <p>Date of NOV/NOE Relating to this Case: October 31, 2007 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failed to install a backflow prevention assembly at all establishments where an actual or potential contamination hazard exists. Specifically, the investigator noted on the date of the investigation that a fire hydrant was being used as the designated filling point for the Respondent's fire truck, and the hydrant had no backflow prevention assembly installed [30 TEX. ADMIN. CODE § 290.44(h)(1)(A)].</p> <p>2) Failed to provide an intruder-resistant fence around the Facility to prevent possible contamination or damage by trespassers. Specifically, on the date of the investigation there was no fence surrounding the Facility, which includes the well, pressure tank, and ground storage tank [30 TEX. ADMIN. CODE §§ 290.41(c)(3)(O) and 290.43(e)].</p> <p>3) Failed to calibrate the well meter at least once every three years [30 TEX. ADMIN. CODE § 290.46(s)(1)].</p>	<p>Total Assessed: \$1,422</p> <p>Total Deferred: \$284 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,138</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that, on or about October 19, 2007, the Respondent implemented the following corrective measures at the Facility:</p> <p>a. Began calibrating the well meter on a monthly basis and recording the calibration dates in its monthly operating report; and</p> <p>b. Eliminated the potential contamination hazard source by removing the hose from the fire hydrant and implemented a policy to prevent the fire department from using hydrants as filling points for the Respondent's fire trucks.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 60 days after the effective date of this Agreed Order, provide an intruder-resistant fence around the well, the pressure tank, and the ground storage tank to exclude possible contamination or damage to the Facility by trespassers; and</p> <p>b. Within 75 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): PWS ID No. 1570003



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

DATES	Assigned	5-Nov-2007	Screening	4-Dec-2007	EPA Due	
	PCW	4-Dec-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Midway
Reg. Ent. Ref. No.	RN101193274
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35070	No. of Violations	3
Docket No.	2007-2018-PWS-E	Order Type	1660
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 Subtotals 2, 3, & 7

Notes

Culpability Subtotal 4

Notes

Good Faith Effort to Comply Subtotal 5

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

Notes

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

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Adjustment

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

Notes

PAYABLE PENALTY

Screening Date 4-Dec-2007

Docket No. 2007-2018-PWS-E

PCW

Respondent City of Midway

Policy Revision 2 (September 2002)

Case ID No. 35070

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101193274

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>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 27%

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

N/A

Adjustment Percentage (Subtotal 3) 0%

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

N/A

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

The compliance history enhancement is due to one prior Notice of Violation containing violations that are the same as or similar to the violations in the current enforcement action, one prior Notice of Violation containing dissimilar violations, and one prior Agreed Order containing a denial of liability.

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

Screening Date 4-Dec-2007	Docket No. 2007-2018-PWS-E	PCW
Respondent City of Midway		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 35070		<i>PCW Revision November 6, 2007</i>
Reg. Ent. Reference No. RN101193274		
Media [Statute] Public Water Supply		
Enf. Coordinator Rebecca Clausewitz		
Violation Number	1	
Rule Cite(s)	30 Tex. Admin. Code § 290.44(h)(1)(A)	
Violation Description	Failed to install a backflow prevention assembly at all establishments where an actual or potential contamination hazard exists. Specifically, the investigator noted on the date of the investigation that a fire hydrant was being used as the designated filling point for the Respondent's fire truck, and the hydrant had no backflow prevention assembly installed.	
	Base Penalty	\$1,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
		Major	Moderate		Minor
	Actual				
	Potential	x			
			Percent	25%	

>> Programmatic Matrix

	Falsification				
		Major	Moderate		Minor
			Percent	0%	
Matrix Notes	Failure to have a proper backflow prevention assembly in place could result in contamination of the water system and expose the public to a significant amount of contaminants which would exceed levels protective of human health.				

Adjustment \$750

\$250

Violation Events

Number of Violation Events	1		24	Number of violation days
<i>mark only one with an x</i>	daily		monthly	x
	quarterly		semiannual	
	annual		single event	
			Violation Base Penalty	\$250

One monthly event is recommended, calculated from the date of the investigation, September 25, 2007, to the date of compliance, October 19, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount	\$0	Violation Final Penalty Total	\$323
		This violation Final Assessed Penalty (adjusted for limits)	\$323

Economic Benefit Worksheet

Respondent City of Midway
Case ID No. 35070
Reg. Ent. Reference No. RN101193274
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$100	25-Sep-2007	19-Oct-2007	0.1	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs
 The delayed cost includes the amount to remove the source of potential contamination, calculated from the date of the investigation to the date the Respondent indicated that the hose used by the fire department for filling up its vehicles was disconnected from the fire hydrant.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance	\$100	TOTAL	\$0
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Screening Date 4-Dec-2007	Docket No. 2007-2018-PWS-E	PCW
Respondent City of Midway		<i>Policy Revision 2 (September 2002)</i>
Case ID No. 35070		<i>PCW Revision November 6, 2007</i>
Reg. Ent. Reference No. RN101193274		
Media [Statute] Public Water Supply		
Enf. Coordinator Rebecca Clausewitz		
Violation Number	2	
Rule Cite(s)	30 Tex. Admin. Code §§ 290.41(c)(3)(O) and 290.43(e)	
Violation Description	Failed to provide an intruder-resistant fence around the Facility to prevent possible contamination or damage by trespassers. Specifically, on the date of the investigation there was no fence surrounding the Facility, which includes the well, pressure tank, and ground storage tank.	
	Base Penalty	\$1,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	
					Percent
	Failing to provide an intruder resistant fence leaves the water supply vulnerable to contamination or damage by trespassers, causing the customers of the water supply to be exposed to a significant amount of contaminants which would exceed levels protective of human health.				0%
			Adjustment	\$750	

\$250

Violation Events

Number of Violation Events	3		70	Number of violation days	
<i>mark only one with an x</i>	daily				
	monthly	x			
	quarterly				Violation Base Penalty
	semiannual				\$750
	annual				
	single event				

Three monthly events are recommended, calculated from the date of the investigation, September 25, 2007, to the date of case screening, December 4, 2007.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount	\$131
	Violation Final Penalty Total
	\$970
	This violation Final Assessed Penalty (adjusted for limits)
	\$970

Economic Benefit Worksheet

Respondent City of Midway
Case ID No. 35070
Reg. Ent. Reference No. RN101193274
Media 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
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Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$2,000	25-Sep-2007	31-Aug-2008	0.9	\$6	\$125	\$131
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the amount to install an intruder-resistant fence around the well, pressure storage tank, and ground storage tank, calculated from the date of the investigation to the estimated date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$2,000**

TOTAL **\$131**

Screening Date 4-Dec-2007	Docket No. 2007-2018-PWS-E	PCW
Respondent City of Midway	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 35070	<small>PCW Revision November 6, 2007</small>	
Reg. Ent. Reference No. RN101193274		
Media [Statute] Public Water Supply		
Enf. Coordinator Rebecca Clausewitz		
Violation Number <input type="text" value="3"/>		
Rule Cite(s)	30 Tex. Admin. Code § 290.46(s)(1)	
Violation Description	Failed to calibrate the well meter at least once every three years.	
Base Penalty		\$1,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	

Matrix Notes
Failing to calibrate the well meter could result in absent or inaccurate water production data which could impact the water system's treatment and production capabilities. This could cause customers of the water system to be exposed to significant amounts of contaminants which would not exceed levels that are protective of human health.

Adjustment

\$100

Violation Events

Number of Violation Events <input type="text" value="1"/>	<input type="text" value="24"/>	Number of violation days
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<small>mark only one with an x</small>	daily		
	monthly		
	quarterly	x	
	semiannual		
	annual		
	single event		

Violation Base Penalty

One quarterly event is recommended, calculated from the date of the investigation, September 25, 2007, to the date of compliance, October 19, 2007.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$30"/>	Violation Final Penalty Total <input type="text" value="\$129"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$129"/>	

Economic Benefit Worksheet

Respondent City of Midway
Case ID No. 35070
Reg. Ent. Reference No. RN101193274
Media Public Water Supply
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$25	25-Sep-2004	25-Sep-2007	3.9	\$5	\$25	\$30
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the amount to calibrate the well meter, calculated for the three years prior to the date of the investigation on September 25, 2007.

Approx. Cost of Compliance

\$25

TOTAL

\$30

Compliance History

Customer/Respondent/Owner-Operator:	CN600639215 City of Midway	Classification: AVERAGE	Rating: 3.67
Regulated Entity:	RN101193274 CITY OF MIDWAY	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	1570003
	WATER LICENSING	LICENSE	1570003
Location:	12250 STATE HIGHWAY 21 E, MIDWAY, TX, 75852		
TCEQ Region:	REGION 09 - WACO		
Date Compliance History Prepared:	December 06, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	December 04, 2002 to December 04, 2007		

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

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

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

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

- | | |
|--|----------------------------|
| Effective Date: 03/06/2006 | ADMINORDER 2005-1226-PWS-E |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(5) | |
| 5A THC Chapter 341, SubChapter A 341.0315(c) | |
| Description: Violated the MCL for HAA5 in the 4th Quarter of 2004. | |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4) | |
| 5A THC Chapter 341, SubChapter A 341.0315(c) | |
| Description: Violated the MCL for TTHM in the 3rd Quarter of 2004. | |

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 | 12/30/2002 | (19621) |
| 2 | 04/04/2003 | (30011) |
| 3 | 06/20/2005 | (395455) |
| 4 | 05/16/2006 | (465722) |
| 5 | 10/30/2007 | (595538) |

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

- | | | | |
|------------------|--|-----------------|-------|
| Date: 01/02/2003 | (19621) | | |
| Self Report? | NO | Classification: | Minor |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.46(r) | | |
| Description: | Failure to maintain a minimum pressure of 35 psi. | | |
| Self Report? | NO | Classification: | Minor |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.43(c)(8) | | |
| Description: | Failure to maintain the exterior of the elevated storage tank. | | |
| Date: 03/16/2006 | (454253) | | |
| Self Report? | NO | Classification: | Minor |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O) | | |
| | 30 TAC Chapter 290, SubChapter D 290.43(e) | | |

Description:	Failure to provide an intruder-resistant fence in order to protect the well, the pressure tank, and the ground storage tank.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.46(h)		
Description:	Failure to maintain on hand a supply of calcium hypochlorite disinfectant.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.42(l)		
Description:	Failure to provide a plant operations manual.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.46(n)(2)		
Description:	Failure to provide an up-to-date distribution map.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.43(c)(1)		
Description:	Failure to provide a properly screened roof vent on the ground storage tank.		

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF MIDWAY
RN101193274**

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§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2007-2018-PWS-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Midway ("the City") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a municipal public water supply at 12250 State Highway 21 East in Midway, Madison County, Texas (the "Facility") that has approximately 167 service connections and serves at least 25 people per day for at least 60 days per year.
2. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
3. The City received notice of the violations alleged in Section II ("Allegations") on or about November 5, 2007.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of One Thousand Four Hundred Twenty-Two Dollars (\$1,422) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The City has paid One Thousand One Hundred Thirty-Eight Dollars (\$1,138) of the administrative penalty and Two Hundred Eighty-Four Dollars (\$284) is deferred contingent upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty.
6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

7. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director recognizes that, on or about October 19, 2007, the City implemented the following corrective measures at the Facility:
 - a. The City began calibrating the well meter on a monthly basis and recording the calibration dates in its monthly operating report; and
 - b. The City eliminated the potential contamination hazard source by removing the hose from the fire hydrant and implemented a policy to prevent the fire department from using hydrants as filling points for the City's fire trucks.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the City is alleged to have:

1. Failed to install a backflow prevention assembly at all establishments where an actual or potential contamination hazard exists, in violation of 30 TEX. ADMIN. CODE § 290.44(h)(1)(A), as documented during an investigation conducted on September 25, 2007. Specifically, the investigator noted on the date of the investigation that a fire hydrant was being used as the designated filling point for the City's fire truck, and the hydrant had no backflow prevention assembly installed.
2. Failed to provide an intruder-resistant fence around the Facility to prevent possible contamination or damage by trespassers, in violation of 30 TEX. ADMIN. CODE §§ 290.41(c)(3)(O) and 290.43(e), as documented during an investigation conducted on September 25, 2007. Specifically, on the date of the investigation there was no fence surrounding the Facility, which includes the well, pressure tank, and ground storage tank.
3. Failed to calibrate the well meter at least once every three years, in violation of 30 TEX. ADMIN. CODE § 290.46(s)(1), as documented during an investigation conducted on September 25, 2007.

III. DENIALS

The City generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Midway, Docket No. 2007-2018-PWS-E" to:

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

2. It is further ordered that the City shall undertake the following technical requirements:
 - a. Within 60 days after the effective date of this Agreed Order, provide an intruder-resistant fence around the well, the pressure tank, and the ground storage tank to exclude possible contamination or damage to the Facility by trespassers, in accordance with 30 TEX. ADMIN. CODE §§ 290.41 and 290.43.
 - b. Within 75 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

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

3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

5/5/2008

Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

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

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

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



Signature

March 7, 2008

Date

Sabra S. Ferguson

Name (Printed or typed)
Authorized Representative of
City of Midway

City Secretary

Title

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

