

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2006-1698-PWS-E TCEQ ID: RN104814447 CASE NO.: 31226**

**RESPONDENT NAME: FELIPE POSADA DBA KEY ROAD SUBDIVISION WATER SUPPLY**

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

**SITE WHERE VIOLATION(S) OCCURRED:** 4091 Key Road, Bloomington, Victoria County

**TYPE OF OPERATION:** Public water supply

**SMALL BUSINESS:**  Yes  No

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

**INTERESTED PARTIES:** No one other than the ED and the Respondent has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on November 26, 2007. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Tracy Chandler, Litigation Division, MC 175, (512) 239-0629  
 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

**TCEQ Enforcement Coordinator:** Ms. Catherine Albrecht, Water Enforcement Section, MC R-12, (713) 767-3672

**TCEQ Regional Contact:** Mr. David Kennebeck, Corpus Christi Regional Office, MC R-14, (361) 825-3111

**Respondent:** Mr. Felipe Posada dba Key Road Subdivision Water Supply, P.O. Box 162, Bloomington, Texas 77951

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b> N/A</p> <p><b>Dates of Investigation Relating to this Case:</b>                      September 5, 2006 and January 18, 2006</p> <p><b>Date of NOV/NOE Relating to this Case:</b>                      February 24, 2006 (NOV); September 13, 2006 (NOE)</p> <p><b>Background Facts:</b>                      The EDP RP was filed on February 27, 2007. The certified mail was returned as unclaimed. The first class mail has not been returned, indicating that the Respondent received notice of the EDP RP. The Respondent did not file an answer.                      The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>PWS</b></p> <ol style="list-style-type: none"> <li>Failed to conduct routine bacteriological monitoring of the public water supply and failure to provide public notification of the failure to perform routine bacteriological monitoring of the public water supply during the months of January through September 2006 [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(A) and TEX. HEALTH &amp; SAFETY CODE § 341.033(d)].</li> <li>Failed to ensure that the public water supply operation is under the direction supervision of a water works operator who holds a Class "D" or higher license [30 TEX. ADMIN. CODE § 290.46(e) and TEX. HEALTH &amp; SAFETY CODE § 341.033(a)].</li> <li>Failed to maintain a record of water works operation and maintenance activities [30 TEX. ADMIN. CODE § 290.46(f)].</li> <li>Failed to maintain an up-to-date chemical and microbiological monitoring plan [30 TEX. ADMIN. CODE § 290.121(a)].</li> <li>Failed to monitor free chlorine disinfectant residual at representative locations in the distribution system at least once every seven days [30 TEX. ADMIN. CODE § 290.110(c)(5)(A)].</li> </ol>	<p><b>Total Assessed:</b> \$3,098</p> <p><b>Total Deferred:</b> \$0</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$3,098</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p><b>Site Compliance History Classification:</b>                      N/A</p> <p><b>Person Compliance History Classification:</b>                      N/A</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Technical Requirements:</b></p> <p>The Respondent shall:</p> <ol style="list-style-type: none"> <li>Within 10 days:                         <ol style="list-style-type: none"> <li>Begin maintaining water system records such that they can be made available for review upon the request of Commission personnel at the time of the investigation;</li> <li>Begin monitoring the disinfectant residual at representative locations in the distribution system at least once every seven days utilizing an approved method;</li> <li>Develop and begin maintaining an up-to-date chemical and microbiological monitoring plan; and</li> <li>Begin performing monthly bacteriological sampling utilizing samples which are representative of the Facility's water system, according to the Facility's written sample plan.</li> </ol> </li> <li>Within 30 days, begin operating the Facility under the direct supervision of a water works operator who holds a Class "D" or higher license.</li> <li>Within 45 days, submit written certification of compliance with Ordering Provisions above.</li> </ol>



**Penalty Calculation Worksheet (PCW)**  
 Policy Revision 2 (September 2002) PCW Revision May 19, 2005

<b>DATES</b>	Assigned	11-Sep-2006	Screening	14-Sep-2006	EPA Due	
	PCW	14-Sep-2006				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Felipe Posada dba Key Road Subdivision Water Supply		
Reg. Ent. Ref. No.	RN104814447		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor Source

<b>CASE INFORMATION</b>			
Enf./Case ID No.	31226	No. of Violations	5
Docket No.	2006-1698-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Enf. Coordinator	Chris Miller
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** 5% Enhancement **Subtotals 2, 3, & 7**

Notes

**Culpability** 0% Enhancement **Subtotal 4**

Notes

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

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

Notes

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

Total EB Amounts	\$6,461	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$11,150	

**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** 20% Reduction Adjustment

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

Notes

**PAYABLE PENALTY**

**Screening Date** 14-Sep-2006 **Docket No.** 2006-1698-PWS-E **PCW**  
**Respondent** Felipe Posada dba Key Road Subdivision Water Supply *Policy Revision 2 (September 2002)*  
**Case ID No.** 31226 *PCW Revision May 19, 2005*  
**Reg. Ent. Reference No.** RN104814447  
**Media [Statute]** Public Water Supply  
**Enf. Coordinator** Chris Miller

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

**Adjustment Percentage (Subtotal 2)** 5%

>> **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 enhancement is due to one prior NOV with violations that are the same as or similar to the violations in the current enforcement order.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 5%

<b>Screening Date</b> 14-Sep-2006	<b>Docket No.</b> 2006-1698-PWS-E	<b>PCW</b>
<b>Respondent</b> Felipe Posada dba Key Road Subdivision Water Supply		<small>Policy Revision 2 (September 2002)</small>
<b>Case ID No.</b> 31226		<small>PCW Revision May 19, 2005</small>
<b>Reg. Ent. Reference No.</b> RN104814447		
<b>Media [Statute]</b> Public Water Supply		
<b>Enf. Coordinator</b> Chris Miller		
<b>Violation Number</b>	1	
<b>Primary Rule Cite(s)</b>	30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(A)	
<b>Secondary Rule Cite(s)</b>	Tex. Health & Safety Code § 341.033(d)	
<b>Violation Description</b>	Failure to conduct routine bacteriological monitoring of the public water supply and failure to provide public notification of the failure to perform routine bacteriological monitoring of the public water supply during the months of January through September 2006.	
	<b>Base Penalty</b>	\$1,000

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

<b>Harm</b>				
<b>Release</b>	Major	Moderate	Minor	
Actual				<b>Percent</b> <input style="width: 50px;" type="text" value="25%"/>
Potential	x			

>> **Programmatic Matrix**

<b>Falsification</b>	Major	Moderate	Minor	
				<b>Percent</b> <input style="width: 50px;" type="text"/>

**Matrix Notes** Failure to conduct bacteriological monitoring and provide public notice may result in undetected contaminated water being distributed to the public, resulting in illness.

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**

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

**Violation Base Penalty**

Nine monthly events are recommended.

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

### Economic Benefit Worksheet

Respondent Felipe Posada dba Key Road Subdivision Water Supply  
 Case ID No. 31226  
 Reg. Ent. Reference No. RN104814447  
 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
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				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: There are no delayed costs associated with this violation.

<b>Avoided Costs</b>							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$450	01-Jan-2006	01-Sep-2006	0.7	\$15	\$300	\$315
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: The avoided costs include the amount to conduct monthly bacteriological sampling, to provide sampling results to the Commission, and/or provide public notification, calculated for the months when violations occurred.

Approx. Cost of Compliance **\$450**

**TOTAL \$315**

<b>Screening Date</b> 14-Sep-2006	<b>Docket No.</b> 2006-1698-PWS-E	<b>PCW</b>
<b>Respondent</b> Felipe Posada dba Key Road Subdivision Water Supply	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 31226	<i>PCW Revision May 19, 2005</i>	
<b>Reg. Ent. Reference No.</b> RN104814447		
<b>Media [Statute]</b> Public Water Supply		
<b>Enf. Coordinator</b> Chris Miller		
<b>Violation Number</b> <input type="text" value="2"/>		
<b>Primary Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 290.46(e)"/>	
<b>Secondary Rule Cite(s)</b>	<input type="text" value="Tex. Health &amp; Safety Code § 341.033(a)"/>	
<b>Violation Description</b>	<input type="text" value="Failure to ensure that the public water supply operation is under the direct supervision of a water works operator who holds a minimum of a Class D license."/>	
<b>Base Penalty</b>		<input type="text" value="\$1,000"/>

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

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

>> **Programmatic Matrix**

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

**Matrix Notes**

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**

	<i>daily</i>	<input type="text"/>
	<i>monthly</i>	<input checked="" type="checkbox"/>
<i>mark only one use a small x</i>	<i>quarterly</i>	<input type="text"/>
	<i>semiannual</i>	<input type="text"/>
	<i>annual</i>	<input type="text"/>
	<i>single event</i>	<input type="text"/>

**Violation Base Penalty**

**Economic Benefit (EB) for this violation**

**Estimated EB Amount**

**Statutory Limit Test**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

### Economic Benefit Worksheet

Respondent Felipe Posada dba Key Road Subdivision Water Supply  
 Case ID No. 31226  
 Reg. Ent. Reference No. RN104814447  
 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
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				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: There are no delayed costs associated with this violation.

**Avoided Costs**

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

Item	Cost	Date	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel	\$10,000	05-Sep-2006	01-Apr-2007	0.6	\$285	\$5,699	\$5,984
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: The avoided cost includes the amount to employ a Class D licensed water works operator, calculated from the date of the investigation to the estimated date of compliance.

Approx. Cost of Compliance: \$10,000

TOTAL: \$5,984

Screening Date 14-Sep-2006

Docket No. 2006-1698-PWS-E

PCW

Respondent Felipe Posada dba Key Road Subdivision Water Supply

Policy Revision 2 (September 2002)

Case ID No. 31226

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN104814447

Media [Statute] Public Water Supply

Enf. Coordinator Chris Miller

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Failure to maintain a record of water works operation and maintenance activities. At the time of the investigation the following records were not available: amount of chemicals used weekly, amount of water treated weekly, complaints recieved, dates dead-ends are flushed, date storage tanks and other facilities are cleaned, maintenance records, and daily/monthly summary of worked performed.

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	
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>

Matrix Notes

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

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 Felipe Posada dba Key Road Subdivision Water Supply  
 Case ID No. 31226  
 Reg. Ent. Reference No. RN104814447  
 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
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$300	05-Sep-2006	01-Mar-2007	0.5	\$7	n/a	\$7
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: The delayed costs include the amount to create and maintain a record keeping system, calculated from the date of the investigation to 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: There are no avoided costs associated with this violation.

Approx. Cost of Compliance **\$300** TOTAL **\$7**

Screening Date 14-Sep-2006

Docket No. 2006-1698-PWS-E

PCW

Respondent Felipe Posada dba Key Road Subdivision Water Supply

Policy Revision 2 (September 2002)

Case ID No. 31226

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN104814447

Media [Statute] Public Water Supply

Enf. Coordinator Chris Miller

Violation Number 4

Primary Rule Cite(s) 30 Tex. Admin. Code § 290.121(a)

Secondary Rule Cite(s)

Violation Description Failure to maintain an up-to-date chemical and microbiological monitoring plan.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	X			10%

Matrix Notes 100 percent of the rule requirement was not met.

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.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$105

This violation Final Assessed Penalty (adjusted for limits) \$105

### Economic Benefit Worksheet

Respondent Felipe Posada dba Key Road Subdivision Water Supply  
 Case ID No. 31226  
 Reg. Ent. Reference No. RN104814447  
 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 Costs	EB Amount
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$100	05-Sep-2006	01-Mar-2007	0.5	\$2	n/a	\$2
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: The delayed costs include the amount to create and begin maintaining a chemical and microbiological monitoring plan, calculated from the date of the investigation to the estimated date of compliance.

Item Description	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Avoided Costs</b>					
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: There are no avoided costs associated with this violation.

Approx. Cost of Compliance

TOTAL

Screening Date 14-Sep-2006

Docket No. 2006-1698-PWS-E

PCW

Respondent Felipe Posada dba Key Road Subdivision Water Supply

Policy Revision 2 (September 2002)

Case ID No. 31226

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN104814447

Media [Statute] Public Water Supply

Enf. Coordinator Chris Miller

Violation Number 5

Primary Rule Cite(s) 30 Tex. Admin. Code § 290.110(c)(5)(A)

Secondary Rule Cite(s)

Violation Description Failure to monitor free chlorine disinfectant residual at representative locations in the distribution system at least once every seven days.

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 Failure to monitor disinfectant residual could expose water being supplied for human consumption to significant amounts of contaminants which would exceed levels that are protective of human health.

Adjustment -\$750

Base Penalty Subtotal \$250

Violation Events

Number of Violation Events 1

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

Violation Base Penalty \$250

One monthly event is recommended from the date of the investigation, September 5, 2006, to the date of screening, September 14, 2006.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$153

Violation Final Penalty Total \$263

This violation Final Assessed Penalty (adjusted for limits) \$263

### Economic Benefit Worksheet

Respondent Felipe Posada dba Key Road Subdivision Water Supply  
 Case ID No. 31226  
 Reg. Ent. Reference No. RN104814447  
 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				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: There are no delayed costs associated with this violation.

Item	Cost	Date	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$300	05-Sep-2006	01-Mar-2007	0.5	\$7	\$145	\$153
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 weekly chlorine residual monitoring, calculated from the date of the investigation to the estimated date of compliance.

Approx. Cost of Compliance **\$300**

**TOTAL \$153**

# Compliance History

Customer/Respondent/Owner-Operator:	CN602960692	POSADA, FELIPE	Classification:	Rating:
Regulated Entity:	RN104814447	KEY ROAD SUBDIVISION WATER SUPPLY	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY		REGISTRATION	2350055
Location:	4091 KEY ROAD BLOOMINGTON TEXAS 77951			
TCEQ Region:	REGION 14 - CORPUS CHRISTI			
Date Compliance History Prepared:	September 14, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 14, 2001 to September 14, 2006			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Chris Miller	Phone:	512-239-6580	

## Site Compliance History Components

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

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |  |
|---|------------|----------|--|
| 1 | 06/23/2006 | (483698) |  |
| 2 | 09/08/2006 | (511514) |  |
- E. Written notices of violations.(NOV). (CCEDS Inv. Track. No.)
- |                  |  |                          |
|------------------|--|--------------------------|
| Date: 02/24/2006 | (455309)   |                          |
| Self Report? NO  |  | Classification: Minor    |
| Citation:        | 30 TAC Chapter 290, SubChapter D 290.45(f)(1)  |                          |
| Description:     | Failure to secure a written contract, a signed document of specific terms, or a memorandum or letter of understanding between the purchaser and wholesaler which authorizes the purchase of water.   |                          |
| Self Report? NO  |  | Classification: Moderate |
| Citation:        | 30 TAC Chapter 290, SubChapter D 290.46(b)   |                          |
| Description:     | Failure to submit samples for microbiological analyses as required by 30 Tex. Admin. Code Chapter 290 subchapter F.  |                          |
| Self Report? NO  |  | Classification: Moderate |
| Citation:        | 30 TAC Chapter 290, SubChapter D 290.46(e)   |                          |
| Description:     | Failure to employ an operator who holds a class "D" or higher license, for purchase water systems serving no more than 250 connections.  |                          |
| Self Report? NO  |  | Classification: Moderate |
| Citation:        | 30 TAC Chapter 290, SubChapter D 290.46(f)   |                          |
| Description:     | Failure to maintain records of operation including the amt. of chemicals used weekly, amt. of water treated weekly, complaints rec., dates dead-ends flushed, date storage tanks or other facilities are cleaned, maint. records, and daily/monthly sum. of work performed and the number of hours worked by part time operators |                          |

Self Report? NO

Classification: Moderate

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

Description: Failure to maintain an up-to-date chemical and microbiological monitoring plan.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(5)(A)

Description: Failure to monitor the disinfectant residual (free chlorine residual) at representative locations in the distribution system at least once every seven days.

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  
FELIPE POSADA DBA KEY ROAD  
SUBDIVISION WATER SUPPLY,  
RN104814447**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER  
DOCKET NO. 2006-1698-PWS-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, (“Commission” or “TCEQ”) considered the Executive Director’s Preliminary Report and Petition filed pursuant to 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 respondent made the subject of this Order is Felipe Posada dba Key Road Subdivision Water Supply (“Mr. Posada”).

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

**FINDINGS OF FACT**

1. Mr. Posada owns and operates a public water supply located at 4091 Key Road, Bloomington, Victoria County, Texas (the “Facility”).
2. The Facility has approximately 16 service connections and serves at least 25 people per day for at least 60 days per year.
3. During a record review conducted on September 5, 2006, TCEQ staff documented that Mr. Posada failed to:
  - a. conduct routine bacteriological monitoring of the public water supply and failed to provide public notification of the failure to perform routine bacteriological monitoring of the public water supply during the months of January through September 2006;
  - b. ensure that the public water supply operation is under the direct supervision of a water works operator who holds a Class “D” or higher license;

- c. maintain a record of water works operation and maintenance activities. At the time of the investigation the following records were not available: amount of chemicals used weekly, amount of water treated weekly, complaints received, dates dead-ends are flushed, date storage tanks and other facilities are cleaned, maintenance records, and daily/monthly summary of work performed;
  - d. maintain an up-to-date chemical and microbiological monitoring plan; and
  - e. monitor free chlorine disinfectant residual at representative locations in the distribution system at least once every seven days.
4. Mr. Posada received notice of the violations on or about September 13, 2006.
  5. 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 Felipe Posada dba Key Road Subdivision Water Supply" (the "EDPRP") in the TCEQ Chief Clerk's office on February 27, 2007.
  6. By letter dated February 27, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Posada with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed". The first class mail has not been returned, indicating that Mr. Posada received notice of the EDPRP.
  7. More than 20 days have elapsed since Mr. Posada received notice of the EDPRP, provided by the Executive Director. Mr. Posada failed to file an answer to the EDPRP, 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, Mr. Posada is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Posada failed to conduct routine bacteriological monitoring of the public water supply and failed to provide public notification of the failure to perform routine bacteriological monitoring of the public water supply during the months of January through September 2006, in violation of 30 TEX. ADMIN. CODE

§§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(A) and TEX. HEALTH & SAFETY CODE § 341.033(d);

3. As evidenced by Finding of Fact No. 3.b., Mr. Posada failed to ensure that the public water supply operation is under the direction supervision of a water works operator who holds a Class "D" or higher license, in violation of 30 TEX. ADMIN. CODE § 290.46(e) and TEX. HEALTH & SAFETY CODE § 341.033(a);
4. As evidenced by Finding of Fact No. 3.c., Mr. Posada failed to maintain a record of water works operation and maintenance activities. At the time of the investigation the following records were not available: amount of chemicals used weekly, amount of water treated weekly, complaints received, dates dead-ends are flushed, date storage tanks and other facilities are cleaned, maintenance records, and daily/monthly summary of work performed, in violation of 30 TEX. ADMIN. CODE § 290.46(f).
5. As evidenced by Finding of Fact No. 3.d., Mr. Posada failed to maintain an up-to-date chemical and microbiological monitoring plan, in violation of 30 TEX. ADMIN. CODE § 290.121(a).
6. As evidenced by Finding of Fact 3.e., Mr. Posada failed to monitor free chlorine disinfectant residual at representative locations in the distribution system at least once every seven days, in violation of 30 TEX. ADMIN. CODE § 290.110(c)(5)(A).
7. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Mr. Posada with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
8. As evidenced by Finding of Fact No. 7, Mr. Posada has failed to file a timely answer to the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Posada and assess the penalty recommended by the Executive Director.
9. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Mr. Posada 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.

10. An administrative penalty in the amount of three thousand ninety-eight dollars (\$3,098.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b).
11. 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.

### ORDERING PROVISIONS

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

1. Mr. Posada is assessed an administrative penalty in the amount of three thousand ninety-eight dollars (\$3,098.00) for violations of TEX. HEALTH & SAFETY CODE ch. 341 and rules of the TCEQ. The payment of this administrative penalty and Mr. Posada'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: Felipe Posada dba Key Road Subdivision Water Supply; Docket No. 2006-1698-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. Mr. Posada shall undertake the following technical requirements:
  - a. Within 10 days after the effective date of this Order, Mr. Posada shall:
    - i. Begin maintaining water system records such that they can be made available for review upon the request of Commission personnel at the time of the investigation, in accordance with 30 TEX. ADMIN. CODE § 290.46.

- ii. Begin monitoring the disinfectant residual at representative locations in the distribution system at least once every seven days utilizing an approved method, in accordance with 30 TEX. ADMIN. CODE § 290.110.
  - iii. Develop and begin maintaining an up-to-date chemical and microbiological monitoring plan, in accordance with 30 TEX. ADMIN. CODE § 290.121.
  - iv. Begin performing monthly bacteriological sampling utilizing samples which are representative of the Facility's water system, according to the Facility's written sample plan, in accordance with 30 TEX. ADMIN. CODE §§ 290.109 and 290.122.
- b. Within 30 days after the effective date of this Order, Mr. Posada shall be operating the Facility under the direct supervision of a water works operator who holds a Class "D" or higher license, in accordance with 30 TEX. ADMIN. CODE § 290.46.
  - c. Within 45 days after the effective date of this Order, Mr. Posada shall submit written certification of compliance with Ordering Provisions 2.a. through 2.b. as described below:

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:

David Kennebeck, Water Section Manager  
Texas Commission on Environmental Quality  
Corpus Christi Regional Office  
NRC Bldg., Ste. 1200  
6300 Ocean Dr., Unit 5839  
Corpus Christi, Texas 78412-5839

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Posada. Mr. Posada is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. 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 Mr. Posada shall be made in writing to the Executive Director. Extensions are not effective until Mr. Posada receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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 Mr. Posada if the Executive Director determines that Mr. Posada has not complied with one or more of the terms or conditions in this Order.
7. 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.
8. 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.

Felipe Posada dba Key Road Subdivision Water Supply  
DOCKET NO. 2006-1698-PWS-E  
Page 7

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF TRACY CHANDLER**

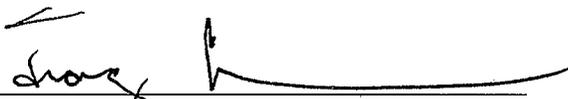
STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Tracy Chandler. 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.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I 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 Felipe Posada dba Key Road Subdivision Water Supply” (the “EDPRP”) with the Office of the Chief Clerk on February 27, 2007.

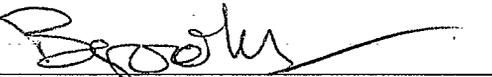
I sent the EDPRP to Mr. Posada at his last known address on February 27, 2007 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed”. The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since Mr. Posada received notice of the EDPRP. Mr. Posada failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference”.

  
\_\_\_\_\_  
Tracy Chandler  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Tracy Chandler, 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 14<sup>th</sup> day of March, A.D., 2008.

  
\_\_\_\_\_  
Notary Signature

Notary Stamp

