

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2008-0308-PWS-E **TCEQ ID:** RN101430924 **CASE NO.:** 35414

**RESPONDENT NAME:** City of Roscoe

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 115 East Cypress, Roscoe, Nolan County</p> <p><b>TYPE OF OPERATION:</b> Public water supply</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> A complaint was received January 14, 2008, alleging a water leak occurred and a boil water notice was not issued. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> A complaint was received but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on July 7, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Epifanio Villarreal, Enforcement Division, Enforcement Team 2, MC-13, (210) 403-4033; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171  <b>Respondent:</b> The Honorable Frank Portor, Mayor, City of Roscoe, P.O. Box 340, Roscoe, Texas 79545                      Mr. Jack W. Brown, City Administrator, City of Roscoe, P.O. Box 340, Roscoe, Texas 79545  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> January 14, 2008</p> <p><b>Date of Investigation Relating to this Case:</b> January 18, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> February 15, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a complaint investigation.</p> <p><b>WATER</b></p> <p>1) Failure to issue a boil water notification within 24 hours using the prescribed notification format as specified in 30 TEX. ADMIN. CODE § 290.47(e) [30 TEX. ADMIN. CODE § 290.46(q)(1)].</p> <p>2) Failure to disinfect a repaired water main in accordance with American Water Works Association ("AWWA") requirements and collect and submit water samples until the results indicate that the water system is free of microbiological contamination before placing the repaired water main back into service [30 TEX. ADMIN. CODE § 290.46(g)].</p>	<p><b>Total Assessed:</b> \$770</p> <p><b>Total Deferred:</b> \$154  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$616</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that on January 29, 2008, water samples collected by the Respondent tested negative for bacteriological contamination.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, develop and begin maintaining a written protocol that is to be followed to ensure that proper public notification and boil water notices are provided to the customers of the water system in the event of distribution pressures below 20 pounds per square inch, water outages, positive microbiological samples, low chlorine residuals, or other conditions which indicate that potability of the water may be compromised, as required by 30 TEX. ADMIN. CODE § 290.46.</p> <p>b. Within 45 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 1770001



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 29, 2008

<b>DATES</b>	<b>Assigned</b>	19-Feb-2008	<b>Screening</b>	19-Feb-2008	<b>EPA Due</b>	
	<b>PCW</b>	19-Feb-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	City of Roscoe
<b>Reg. Ent. Ref. No.</b>	RN101430924
<b>Facility/Site Region</b>	3-Abilene
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>				
<b>Enf./Case ID No.</b>	35414	<b>No. of Violations</b>	2	
<b>Docket No.</b>	2008-0308-PWS-E	<b>Order Type</b>	1660	
<b>Media Program(s)</b>	Public Water Supply	<b>Enf. Coordinator</b>	Epifanio Villarreal	
<b>Multi-Media</b>		<b>EC's Team</b>	Enforcement Team 2	
<b>Admin. Penalty \$</b>	<b>Limit Minimum</b>	\$50	<b>Maximum</b>	\$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 EDPRP/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** 19-Feb-2008

**Docket No.** 2008-0308-PWS-E

**PCW**

**Respondent** City of Roscoe

Policy Revision 2 (September 2002)

**Case ID No.** 35414

PCW Revision January 29, 2008

**Reg. Ent. Reference No.** RN101430924

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Epifanio Villarreal

**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)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 24%

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

N/A

**Adjustment Percentage (Subtotal 3)** 0%

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

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

The penalty enhancement is due to two prior dissimilar Notices of Violation ("NOVs") and one prior enforcement order containing a denial of liability.

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

<b>Screening Date</b> 19-Feb-2008	<b>Docket No.</b> 2008-0308-PWS-E	<b>PCW</b>
<b>Respondent</b> City of Roscoe		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 35414		<i>PCW Revision January 29, 2008</i>
<b>Reg. Ent. Reference No.</b> RN101430924		
<b>Media [Statute]</b> Public Water Supply		
<b>Enf. Coordinator</b> Epifanio Villarreal		

**Violation Number**

**Rule Cite(s)**

**Violation Description** Failed to issue a boil water notification within 24 hours using the prescribed notification format as specified in 30 Tex. Admin. Code § 290.47(e). Specifically, at the time of the investigation, it was documented that the Respondent did not issue a boil water notice within 24 hours after the pressure in a portion of the distribution system dropped below 20 pounds per square inch ("psi") after a break in the line.

**Base Penalty**

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

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

**>> Programmatic Matrix**

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

**Matrix Notes** Failure to issue a boil water notice may not allow the public to take appropriate measures in response to the low water pressure which could result in the delivery of contaminated water that would exceed levels that are protective of human health.

**Adjustment**

**Violation Events**

Number of Violation Events        Number of violation days

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

**Violation Base Penalty**

One single event is recommended.

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

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

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

## Economic Benefit Worksheet

**Respondent** City of Roscoe  
**Case ID No.** 35414  
**Reg. Ent. Reference No.** RN101430924  
**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)				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]	\$100	14-Jan-2008	15-Jan-2008	0.0	\$0	\$100	\$100
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the amount necessary to provide a boil water notice, calculated for the 24 hour occurrence.

Approx. Cost of Compliance

\$100

TOTAL

\$100

<b>Screening Date</b> 19-Feb-2008	<b>Docket No.</b> 2008-0308-PWS-E	<b>PCW</b>
<b>Respondent</b> City of Roscoe	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 35414	<i>PCW Revision January 29, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN101430924		
<b>Media [Statute]</b> Public Water Supply		
<b>Enf. Coordinator</b> Epifanio Villarreal		

**Violation Number**

**Rule Cite(s)**

**Violation Description**

Failed to disinfect a repaired water main in accordance with American Water Works Association ("AWWA") requirements and collect and submit water samples until the results indicate that the water system is free of microbiological contamination before placing the repaired water main back into service. Specifically, at the time of the investigation, it was documented that the Respondent had not disinfected the repaired main or collected a water sample to determine if the line was free from microbiological contamination.

**Base Penalty**

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

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

**>> Programmatic Matrix**

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

**Matrix Notes**

Failing to disinfect and collect water samples on a repaired line will or could expose customers of the water supply to contaminated water which would exceed levels that are protective of human health.

**Adjustment**

**Violation Events**

Number of Violation Events        Number of violation days

<i>mark only one with an 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 type="text" value="x"/>	

**Violation Base Penalty**

One single event is recommended.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount <input type="text" value="\$50"/>	Violation Final Penalty Total <input type="text" value="\$385"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$385"/>	

## Economic Benefit Worksheet

**Respondent** City of Roscoe  
**Case ID No.** 35414  
**Reg. Ent. Reference No.** RN101430924  
**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
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)	\$200	18-Jan-2008	29-Jan-2008	0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs includes the amount necessary to disinfect the repaired main in accordance with AWWA requirements, calculated from the date of the investigation to the date of compliance.

### Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$50	18-Jan-2008	29-Jan-2008	0.0	\$0	\$50	\$50

Notes for AVOIDED costs

The avoided costs includes the amount necessary collect a water sample for bacteriological contaminants, calculated from the date of the investigation to the date of compliance.

Approx. Cost of Compliance

\$250

**TOTAL**

\$50

# Compliance History

Customer/Respondent/Owner-Operator:	CN600738843	City of Roscoe	Classification: AVERAGE	Rating: 2.34
Regulated Entity:	RN101430924	CITY OF ROSCOE	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION		1770001
	WATER LICENSING	LICENSE		1770001
Location:	115 E CYPRESS, ROSCOE, NOLAN COUNTY, TX			
TCEQ Region:	REGION 03 - ABILENE			
Date Compliance History Prepared:	February 19, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	February 19, 2003 to February 19, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	<u>Epi Villarreal</u>	Phone:	<u>(210) 403-4033</u>	

### 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: 12/20/2004   | ADMINORDER 2003-0293-PWS-E |
| Classification: Moderate   |                            |
| Citation: 30 TAC Chapter 290, SubChapter F 290.104(b)<br>5A THC Chapter 341, SubChapter A 341.031(a)   |                            |
| Description: Failure to meet the commission's minimum drinking water standards.  |                            |
| Classification: Moderate   |                            |
| Citation: 30 TAC Chapter 290, SubChapter D 290.46(e)(3)(C)<br>5A THC Chapter 341, SubChapter A 341.033(a)  |                            |
| Description: Failure to provide properly licensed personnel.   |                            |
| Classification: Moderate   |                            |
| Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(K)<br>30 TAC Chapter 290, SubChapter D 290.41(c)(4)(B)<br><br>5A THC Chapter 341, SubChapter A 341.036 |                            |
| Description: Failure to provide proper well vents.   |                            |
| Classification: Moderate   |                            |
| Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(J)<br>5A THC Chapter 341, SubChapter A 341.036   |                            |
| Description: Failure to provide concrete sealing block for wells.  |                            |
| Classification: Moderate   |                            |
| Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)   |                            |
| Description: Failure to provide intruder resistant fence around wells.   |                            |
| Classification: Moderate   |                            |
| Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)   |                            |
| Description: Failure to provide maintenance of pump stations and water storage facilities.   |                            |

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(3)  
5A THC Chapter 341, SubChapter A 341.036

Description: Failure to provide proper overflow on water storage facilities.

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

N/A

C. Chronic excessive emissions events.

N/A

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

1	03/16/2005	(373750)
2	05/01/2006	(464133)
3	05/11/2006	(465243)
4	08/02/2007	(570553)
5	08/30/2007	(574134)

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

Date: 05/09/2006 (464133)

Self Report? NO

Classification Major

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

Description: FAILURE TO PROVIDE A MONITORING PLAN.

Self Report? NO

Classification Major

Citation: 30 TAC Chapter 290, SubChapter F 290.121(c)(3)

Description: FAILURE TO SEND THE MONITORING PLAN TO THE EXECUTIVE DIRECTOR IN AUSTIN.

Self Report? NO

Classification Major

Citation: 30 TAC Chapter 290, SubChapter F 290.110(e)(4)

Description: FAILURE TO PROVIDE QUARTERLY DISTRIBUTION REPORTS FOR PWS EACH QUARTER.

Date: 08/06/2007 (570553)

Self Report? NO

Classification Major

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

Description: FAILURE TO PROVIDE A MONITORING PLAN.

Self Report? NO

Classification Major

Citation: 30 TAC Chapter 290, SubChapter F 290.121(c)(3)

Description: FAILURE TO SEND THE MONITORING PLAN TO THE EXECUTIVE DIRECTOR IN AUSTIN.

Self Report? NO

Classification Major

Citation: 30 TAC Chapter 290, SubChapter F 290.110(e)(4)

Description: FAILURE TO PROVIDE QUARTERLY DISTRIBUTION REPORTS FOR PWS EACH QUARTER.

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 ROSCOE  
RN101430924

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2008-0308-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 Roscoe ("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 public water supply at 115 East Cypress in Roscoe, Nolan County, Texas (the "Facility") that has approximately 532 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 February 20, 2008.
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 Seven Hundred Seventy Dollars (\$770) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The City has paid Six Hundred Sixteen Dollars (\$616) of the administrative penalty and One Hundred Fifty-Four Dollars (\$154) 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 January 29, 2008, water samples collected by the City tested negative for bacteriological contamination.
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 issue a boil water notification within 24 hours using the prescribed notification format as specified in 30 TEX. ADMIN. CODE § 290.47(e), in violation of 30 TEX. ADMIN. CODE § 290.46(q)(1), as documented during an investigation conducted on January 18, 2008.
2. Failed to disinfect a repaired water main in accordance with American Water Works Association ("AWWA") requirements and collect and submit water samples until the results indicate that the water system is free of microbiological contamination before placing the repaired water main back into service, in violation of 30 TEX. ADMIN. CODE § 290.46(g), as documented during an investigation conducted on January 18, 2008.

## **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 Roscoe, Docket No. 2008-0308-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 30 days after the effective date of this Agreed Order, develop and begin maintaining a written protocol that is to be followed to ensure that proper public notification and boil water notices are provided to the customers of the water system in the event of distribution pressures below 20 pounds per square inch, water outages, positive microbiological samples, low chlorine residuals, or other conditions which indicate that potability of the water may be compromised, as required by 30 TEX. ADMIN. CODE § 290.46.
  - b. Within 45 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  
Abilene Regional Office  
Texas Commission on Environmental Quality  
1977 Industrial Boulevard  
Abilene, Texas 79602-7833

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

7/2/2008  
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

4-28-08  
Date

Jack W. Brown  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
City of Roscoe

CITY ADMINISTRATOR  
\_\_\_\_\_  
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.

