EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1900-PWS-E **TCEQ ID:** RN101385870 **CASE NO.:** 34994

RESPONDENT NAME: City of Tyler

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
X PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: City of Tyler Public Water Supply, 2228 Golden Road, Tyler, Smith County

TYPE OF OPERATION: Public water supply

SMALL BUSINESS: ____ Yes __X__ 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 June 2, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Mr. Tel Croston, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-5717; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171
Respondent: The Honorable Joseph Seeber, Mayor, City of Tyler, P.O. Box 2039, Tyler, Texas 75710
Mr. Gregory M. Morgan, Director, Utilities & Public Works, City of Tyler, P.O. Box 2039, Tyler, Texas 75710
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint _X_ Routine ___ Enforcement Follow-up ___ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** August 16 through 21, 2007 **Date of NOV/NOE Relating to this Case:** October 26, 2007 (NOE) **Background Facts:** This was a routine investigation. **WATER** 1) Failed to operate the disinfection equipment to maintain a minimum disinfectant residual of 0.5 milligrams per liter ("mg/L") chloramine [30 TEX. ADMIN. CODE § 290.46(d)(2)(B)]. 2) Failed to monitor the disinfectant residual at representative locations throughout the distribution system at least once per day [30 TEX. ADMIN. CODE § 290.110(c)(4)(B)].	**Total Assessed:** $5,295 **Total Deferred:** $1,059 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $4,236 **Site Compliance History Classification** ___ **High** ___ **Average** __ **Poor** **Person Compliance History Classification** __ **High** ___ **Average** __ **Poor** **Major Source:** _X_ Yes ___ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Within 15 days after the effective date of this Agreed Order: i. Begin operating the disinfection equipment whereas to maintain a disinfectant residual of 0.5 mg/L chloramine throughout the distribution system at all times; and ii. Begin monitoring the disinfectant residual at least once per day at representative locations throughout the distribution system. b. Within 30 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.

Additional ID No(s).: 2120004

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision November 6, 2007*

TCEQ

DATES					
Assigned	29-Oct-2007				
PCW	14-Feb-2008	Screening	26-Nov-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	City of Tyler		
Reg. Ent. Ref. No.	RN101385870		
Facility/Site Region	5-Tyler	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	34994	No. of Violations	2
Docket No.	2007-1900-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Enf. Coordinator	Tel Croston
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* **$4,500**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 8% Enhancement — *Subtotals 2, 3, & 7* **$360**

Notes: The Respondent was issued four unrelated Notices of Violation in the past five years.

Culpability — No — 0% Enhancement — *Subtotal 4* **$0**

Notes: The Respondent does not meet the culpability criteria.

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

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

Notes: The Respondent does not meet the good faith criteria.

0% Enhancement* — *Subtotal 6* **$0**

**Capped at the Total EB $ Amount*

Total EB Amounts	$225
Approx. Cost of Compliance	$225

SUM OF SUBTOTALS 1-7 — *Final Subtotal* **$4,860**

OTHER FACTORS AS JUSTICE MAY REQUIRE — 9% — *Adjustment* **$435**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement recommended for the recovery of avoided compliance cost.

Final Penalty Amount **$5,295**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$5,295**

DEFERRAL — 20% Reduction — *Adjustment* **-$1,059**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **$4,236**

Screening Date	26-Nov-2007	**Docket No.** 2007-1900-PWS-E	**PCW**
Respondent	City of Tyler		*Policy Revision 2 (September 2002)*
Case ID No.	34994		*PCW Revision November 6, 2007*
Reg. Ent. Reference No.	RN101385870		
Media [Statute]	Public Water Supply		
Enf. Coordinator	Tel Croston		

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	4	8%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which notices were submitted*)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%
		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 8%

>> 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 Respondent was issued four unrelated Notices of Violation in the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 8%

Screening Date	26-Nov-2007	**Docket No.** 2007-1900-PWS-E	**PCW**
Respondent	City of Tyler		*Policy Revision 2 (September 2002)*
Case ID No.	34994		*PCW Revision November 6, 2007*
Reg. Ent. Reference No.	RN101385870		
Media [Statute]	Public Water Supply		
Enf. Coordinator	Tel Croston		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.46(d)(2)(B)

Violation Description Failed to operate the disinfection equipment to maintain a minimum disinfectant residual of 0.5 milligrams per liter ("mg/L") chloramine throughout the distribution system at all times. Specifically, the field test conducted on August 16 and 17, 2007, recorded chloramine residuals below 0.5 mg/L. Additionally, a review of daily operating summaries revealed that the chloramine residual was below 0.5 mg/L on August 18, 19 and 21 .

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 50%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Without proper chlorination of the water supply, customers could be exposed to contamination which would exceed levels that are protective of human health.

Adjustment $500

41
$500

Violation Events

Number of Violation Events 5

5 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $2,500

Five single events are recommended based on the dates the violations occurred.

Economic Benefit (EB) for this violation

Estimated EB Amount $225

Statutory Limit Test

Violation Final Penalty Total $2,942

This violation Final Assessed Penalty (adjusted for limits) $2,942

Economic Benefit Worksheet

Respondent City of Tyler
Case ID No. 34994
Reg. Ent. Reference No. RN101385870
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	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							
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)	$225	16-Aug-2007	21-Aug-2007	0.0	$0	$225	$225
Notes for AVOIDED costs	The avoided costs include the amount required to maintain a chloramine residual of at least 0.5 mg/L throughout the distribution system, calculated from the initial date that the chloramine residuals were below 0.5 mg/L.						

Approx. Cost of Compliance $225

TOTAL $225

Screening Date 26-Nov-2007 **Docket No.** 2007-1900-PWS-E **PCW**

Respondent City of Tyler *Policy Revision 2 (September 2002)*

Case ID No. 34994 *PCW Revision November 6, 2007*

Reg. Ent. Reference No. RN101385870

Media [Statute] Public Water Supply

Enf. Coordinator Tel Croston

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 290.110(c)(4)(B)

Violation Description Failed to monitor the disinfectant residual at representative locations throughout the distribution system at least once per day. Specifically, a review of the system's records revealed that the system was not monitoring the disinfectant residual at sites that represented the entire system .

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 50%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failure to monitor the disinfectant residual at representative sites within the distribution system could result in customers of the water system being exposed to significant amounts of undetected contaminants which would exceed levels protective of human health.

Adjustment $500

$500

Violation Events

Number of Violation Events 4 102 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $2,000

Four monthly events are recomended from the initial date of the investigation, August 16, 2007, to the date of screening, November 26, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $2,353

This violation Final Assessed Penalty (adjusted for limits) $2,353

Economic Benefit Worksheet

Respondent City of Tyler
Case ID No. 34994
Reg. Ent. Reference No. RN101385870
Media Public Water Supply
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	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							
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs	The avoided costs include the amount to perform daily monitoring of the disinfectant residual in the system calculated from the initial date of the investigation to the date of screening.						

Approx. Cost of Compliance $0

TOTAL $0

Compliance History

Customer/Respondent/Owner-Operator:	CN600335657	City of Tyler	Classification:	Rating:
Regulated Entity:	RN101385870	CITY OF TYLER	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY		REGISTRATION	2120004
	WATER LICENSING		LICENSE	2120004
Location:	2228 Golden Road, TYLER, TX,			
TCEQ Region:	REGION 05 - TYLER			
Date Compliance History Prepared:	February 26, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	February 26, 2003 to February 26, 2008			

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

Name: Tel Croston Phone: 239-5717

Site Compliance History Components

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

Components (Multimedia) for the Site :

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

N/A

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

N/A

C. Chronic excessive emissions events.

N/A

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

1 08/27/2003 (151071)
2 08/30/2004 (292325)
3 08/23/2005 (400800)
4 06/15/2006 (463010)
5 10/16/2007 (596992)
6 10/24/2007 (595683)

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

Date: 08/31/2004 (292325)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(t)
Description: Failure to provide ownership signs at two elevated storage tank locations.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)
Description: Failure to provide a working vent fan in the chlorine room at Plant # 11.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(6)(E)(ii)
Description: Failure to provide spill containment for the Hydrogen Peroxide tanks.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter F 290.121
Description: Failure to provide a copy of the monitoring plan for evaluation.
Date: 08/26/2005 (400800)

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(8)

Description: Failure to maintain ground storage tank in good condition.
Self Report? NO Classification Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(t)
Description: Failure to provide ownership signs at two elevated storage tank locations.
Self Report? NO Classification Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)
Description: Failure to provide a working vent fan in the chlorine room at Plant # 11.
Self Report? NO Classification Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(6)(E)(ii)
Description: Failure to provide spill containment for the Hydrogen Peroxide tanks.
Self Report? NO Classification Minor
Citation: 30 TAC Chapter 290, SubChapter F 290.121
Description: Failure to provide a copy of the monitoring plan for evaluation.
Self Report? NO Classification Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)
Description: Failure to keep facilities at the Golden Rd. plant maintained.
Date 06/15/2006 (463010)
Self Report? NO Classification Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(8)
Description: Failure to maintain ground storage tank in good condition.
Self Report? NO Classification Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)
Description: Failure to keep facilities at the Golden Rd. plant maintained.
Date 10/18/2007 (596992)
Self Report? NO Classification Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)
Description: Failure to keep facilities at the Golden Rd. plant maintained.
Self Report? NO Classification Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(C)(iii)
Description: Failure to complete and maintain recycling practices reports.
Self Report? NO Classification Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(4)
Description: Failure to maintain all appurtenances in a watertight condition.
Self Report? NO Classification Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)
Description: Failure to have up-to-date standards for performing lab equipment calibrations.
Self Report? NO Classification Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(B)(ii)
Description: Failure to check the calibration of benchtop turbidimeters with secondary standards each time a series of samples is tested.
Self Report? NO Classification Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(C)(ii)
Description: Failure to calibrate on-line continuous disinfectant residual analyzers with chlorine solutions of known concentrations at least once every 90 days.
Self Report? NO Classification Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(2)(C)
Description: Failure to provide an air gap or a backflow prevention device for make-up water supply lines.
Self Report? NO Classification Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(6)
Description: Failure to provide secondary containment for the bulk alum tank at the Golden Road plant and the hydrofluosilicic acid day tank at the Lake Palestine plant.
Self Report? NO Classification Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(11)(F)(vi)
Description: Failure to provide a backflow prevention assembly for the surface wash system.
Self Report? NO Classification Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)

Description: Failure to provide for commission review an approved sanitary control easement, ordinance, deed or exception letter.

Self Report? NO Classification Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(N)

Description: Failure to repair an inoperable well flow meter.

Self Report? NO Classification Minor

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

Description: Failure to maintain storage tanks according with AWWA standards.

Self Report? NO Classification Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(D)(iv)

Description: Failure to provide the minimum elevated storage tank capacity.

Self Report? NO Classification Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.42(f)(1)(C)

Description: Failure to provide a level indicator for a chemical bulk storage facility.

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
CITY OF TYLER	§	
RN101385870	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-1900-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 the City of Tyler ("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 2228 Golden Road, Tyler, Smith County, Texas (the "Facility") that has approximately 33,801 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 October 31, 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 Five Thousand Two Hundred Ninety-Five Dollars ($5,295) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The City has paid Four Thousand Two Hundred Thirty-Six Dollars ($4,236) of the administrative penalty and One Thousand Fifty-Nine Dollars ($1,059) 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 agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

8. 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.

9. 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.

10. 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 operate the disinfection equipment to maintain a minimum disinfectant residual of 0.5 milligrams per liter ("mg/L") chloramine, in violation of 30 TEX. ADMIN. CODE § 290.46(d)(2)(B), as documented during an investigation conducted on August 16 through 21, 2007.

2. Failed to monitor the disinfectant residual at representative locations throughout the distribution system at least once per day, in violation of 30 TEX. ADMIN. CODE § 290.110(c)(4)(B), as documented during an investigation conducted on August 16 through 21, 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 Tyler, Docket No. 2007-1900-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 15 days after the effective date of this Agreed Order:

      i. Begin operating the disinfection equipment whereas to maintain a disinfectant residual of 0.5 mg/L chloramine throughout the distribution system at all times, as required by 30 TEX. ADMIN. CODE § 290.46; and

      ii. Begin monitoring the disinfectant residual at least once per day at representative locations throughout the distribution system, as required by 30 TEX. ADMIN. CODE § 290.110.

   b. Within 30 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 No. 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
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3756

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

_____ 5/21/2008
For the Executive Director 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.

_____ 03/20/08
Signature Date

Gregory M. Morgan Director Utilities & Public Works
Name (Printed or typed) Title
Authorized Representative of City of Tyler

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.