

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-0104-PWS-E TCEQ ID: RN101178465 CASE NO.: 32369**  
**RESPONDENT NAME: CITY OF HUBBARD**

<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

**SITE WHERE VIOLATION(S) OCCURRED:** 220 South Magnolia Avenue, Hubbard, Hill County

**TYPE OF OPERATION:** Public Water Supply System

**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 June 9, 2008. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Mary E. Coleman, Litigation Division, MC R-4, (817) 588-5917  
 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  
**SEP Coordinator:** Ms. Sharon Blue, SEP Coordinator Litigation Division, MC 175, (512) 239-2223  
**TCEQ Enforcement Coordinator:** Mr. Epifanio Villarreal, Water Enforcement Section, MC R-13, (210) 403-4033  
**TCEQ Regional Contact:** Mr. Frank Bureson, Waco Regional Office, MC R-9 (254) 761-3001  
**Respondent:** Honorable Terry F. Reddell, Mayor, City of Hubbard, 118 Magnolia Avenue, Hubbard, Texas 76648-2499  
**Respondent's Attorney:** Mr. Kerry L. Haliburton, Attorney, Naman Howell Smith & Lee, LLP, 900 Washington Avenue, Waco, Texas 76703

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input 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>  January 4, 2007</p> <p><b>Date of NOE Relating to this Case:</b>  February 1, 2007</p> <p><b>Background Facts:</b> The EDPRP was filed on July 13, 2007. A signed Agreed Order was received on January 6, 2008.</p> <p><b>PWS</b></p> <p>1. Failed to provide a sanitary control easement or an approved exception to the easement requirement that covers the land within 150 feet or well number 1 [30 TEX. ADMIN. CODE § 290.41(c)(1)(F)].</p> <p>2. Failed to have backflow prevention assemblies tested and certified to be operating within specifications at least annually by a recognized backflow prevention assembly tester [30 TEX. ADMIN. CODE § 290.44(h)(4)].</p> <p>3. Failed to provide an elevated storage capacity of 100 gallons per connection or pressure tank capacity of 20 gallons per connection [30 TEX. ADMIN. CODE §290.45(b)(1)(D)(iv) and TEX. HEALTH AND SAFETY CODE § 341.0315(c)].</p> <p>4. Failed to secure water purchase contract that establishes the maximum rate at which water may be drafted on a daily or hourly basis or a uniform purchase rate for the contract period [30 TEX. ADMIN. CODE § 290.45(f)(3)].</p>	<p><b>Total Assessed:</b> \$715</p> <p><b>Total Deferred:</b> \$715</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to pay  <input checked="" type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$0</p> <p>The administrative penalty shall be conditionally offset by the completion of a Supplemental Environment Project.</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>Corrective Actions Taken:</b></p> <p>The ED recognizes that the Respondent:</p> <ol style="list-style-type: none"> <li>received an exception to the sanitary control easement on April 30, 2007; and</li> <li>submitted a backflow prevention test report on January 16, 2007.</li> </ol> <p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 60 days, obtain a water purchase contract that establishes a maximum rate at which water may be drafted on a daily or hourly basis or uniform purchase rate for the contract period;</li> <li>Within 75 days, submit written certification of compliance with Ordering Provision 1;</li> <li>Within 90 days, provide either: <ol style="list-style-type: none"> <li>an elevated storage capacity of 100 gallons per connection or pressure tank capacity of 20 gallons per connection; or</li> <li>an alternative capacity requirement that complies with a TCEQ-approved alternative capacity requirement request that met the criteria.</li> </ol> </li> <li>Within 105 days, submit written certification of compliance with Ordering Provision 2.</li> </ol> <p>The Respondent shall implement and complete a Supplemental Environmental Project (SEP) (See SEP Attachment A).</p>

Attachment A

Docket Number: 2007-0104-PWS-E

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

**Respondent:** City of Hubbard

**Penalty Amount:** Seven hundred fifteen dollars (\$715)

**SEP Amount:** Seven hundred fifteen dollars (\$715)

**Type of SEP:** Pre-approved SEP

**Third-Party Recipient:** Texas Association of Resource Conservation & Development Areas, Inc. ("RC&D") *Water or Wastewater Assistance*

**Location of SEP:** Hill County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

A. Project

Respondent shall contribute the SEP Amount to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be to the **Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")** for the *Water or Wastewater Assistance project* in Hill County. Specifically, SEP monies will pay for the labor and disposal costs associated with assistance to low-income residents with shallow, improperly designed, or contaminated drinking water wells or failing wastewater systems, or plugging of abandoned wells. The projects will be administered in accordance with federal, state, and local environmental laws and regulations.

Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

B. Environmental Benefit

The wastewater portion of this SEP will provide a discernible environmental benefit by preventing the release of sewage into the environment. Raw sewage can carry bacteria, viruses, protozoa (parasitic organisms), helminthes (intestinal worms), and bioaerosols (inhalable molds and fungi). The diseases they may cause range in severity from mild gastroenteritis (causing stomach cramps and

diarrhea) to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis. People can be exposed through:

- Sewage in drinking water sources.
- Direct contact in areas of public access such as in lawns or streets, or waters used for recreation.
- Shellfish harvested from areas contaminated by raw sewage.
- Inhalation and skin absorption.

Sewage overflows may cause damage to the environment. A key concern with sewage overflows is the effect on rivers, lakes, streams, or aquifer systems. In addition to potential spread of disease, sewage in the environment contributes excess nutrients, metals, and toxic pollutants that contaminate water quality, cause excess algae blooms, and kill fish and other organisms in aquatic habitats.

The drinking water portion of this project will protect water sources for drinking, recreation and wildlife from contamination from the failing treatment systems, and protect public health from contaminated drinking water supplies.

### C. Minimum Expenditure

Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

### 2. **Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Amount to the Third-Party Recipient. Respondent shall mail the contribution with a copy of the Agreed Order to:

Texas Association of Resource Conservation  
and Development Areas, Inc. (RC&D)  
Attention: Eddi Darilek  
1716 Briarcrest Drive Suite 510  
Bryan, Texas 77802-2700

### 3. **Records and Reporting**

Concurrent with the payment of the SEP Amount, Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

In the event of incomplete performance, the Respondent shall submit a check for any remaining amount due made payable to "Texas Commission on Environmental Quality" with the notation "SEP Refund" and the docket number of the case, and shall send it to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**5. Publicity**

Any public statements concerning this SEP made by or on behalf of Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

**TCEQ**

<b>DATES</b>	Assigned	22-Jan-2007	Screening	24-Jan-2007	EPA Due	
	PCW	11-May-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	City of Hubbard
Reg. Ent. Ref. No.	RN101178465
Facility/Site Region	9-Waco
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	32369	No. of Violations	4
Docket No.	2007-0104-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Enf. Coordinator	Epifanio Villarreal
Multi-Media		EC's Team	Enforcement Team 2
Admin. Penalty \$	Limit Minimum \$50	Maximum	\$1,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** **Subtotals 2, 3, & 7**

Notes: The penalty enhancement is due to two prior Notices of Violation containing violations that are the same as or similar to the violations in the current enforcement action.

**Culpability** **Subtotal 4**

Notes: The respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** **Subtotal 5**

	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.

**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. (Enter number only; e.g. -30 for -30%.)

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: Deferral not offered for non-expedited settlement

**PAYABLE PENALTY**

Screening Date 24-Jan-2007

Docket No. 2007-0104-PWS-E

PCW

Respondent City of Hubbard

Policy Revision 2 (September 2006)

Case ID No. 32369

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101178465

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)	2	10%
	Other written NOVs	0	0%
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%
<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) 10%

>> 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 Notices of Violation containing violations that are the same as or similar to the violations in the current enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date 24-Jan-2007

Docket No. 2007-0104-PWS-E

PCW

Respondent City of Hubbard

Policy Revision 2 (September 2002)

Case ID No. 32369

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101178465

Media [Statute] Public Water Supply

Enf. Coordinator Epifanio Villarreal

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.41(c)(1)(F)

Violation Description Failed to provide a sanitary control easement or an approved exception to the easement requirement that covers the land within 150 feet of well number 1.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (5%). Includes 'OR' label.

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0%).

Matrix Notes Without a sanitary control easement, contaminants could enter the well and customers of the water supply could be exposed to insignificant amounts of contaminants that do not exceed levels protective of human health.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 1 Number of violation days 21

Table for frequency selection: daily, monthly, quarterly, semiannual, annual, single event (marked with X).

Violation Base Penalty \$50

One single event is recommended.

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$13 Violation Final Penalty Total \$55

This violation Final Assessed Penalty (adjusted for limits) \$55

## Economic Benefit Worksheet

Respondent City of Hubbard  
 Case ID No. 32369  
 Reg. Ent. Reference No. RN101178465  
 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
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)	\$200	4-Jan-2007	1-Dec-2007	0.9	\$1	\$12	\$13
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the amount to obtain a sanitary control easement or exceptions to the easement requirement, calculated from the date of the investigation to the estimated date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

**TOTAL**

\$13

Screening Date 24-Jan-2007

Docket No. 2007-0104-PWS-E

PCW

Respondent City of Hubbard

Policy Procedure 2 (September 2002)

Case ID No. 32369

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101178465

Media [Statute] Public Water Supply

Enf. Coordinator Epifanio Villarreal

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code 290.44(h)(4)

Violation Description Failed to have backflow prevention assemblies tested and certified to be operating within specifications at least annually by a recognized backflow assembly tester. Specifically, no backflow prevention test report was submitted for the carwash.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Failure to have backflow prevention assemblies tested could cause exposure to pollutants which would exceed levels that are protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1 Number of violation days 365

daily	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$250

One annual event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$630

Violation Final Penalty Total \$275

This violation Final Assessed Penalty (adjusted for limits) \$275

## Economic Benefit Worksheet

Respondent City of Hubbard  
 Case ID No. 32369  
 Reg. Ent. Reference No. RN101178465  
 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
<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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)</b>							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$600	4-Jan-2006	4-Jan-2007	1.0	\$30	\$600	\$630
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 annually test the backflow prevention devices, calculated for the 12 month period proceeding the date of the investigation.

Approx. Cost of Compliance

\$600

**TOTAL**

\$630

Screening Date 24-Jan-2007

Docket No. 2007-0104-PWS-E

PCW

Respondent City of Hubbard

PCW Revision 2 (September 2002)

Case ID No. 32369

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101178465

Media [Statute] Public Water Supply

Enf. Coordinator Epifanio Villarreal

Violation Number 3

Rule Cite(s) 30 Tex Admin. Code § 290.45(b)(1)(D)(iv) and Tex. Health & Safety Code § 341.0315(c)

Violation Description

Failed to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection. Based on an active count of 662 connections, the City must provide a minimum elevated storage of 66,200 gallons or a minimum pressure tank capacity of 13,240 gallons. However, it was noted that the City currently provides zero gallons of elevated storage and pressure tank capacity which is 100% deficient.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

	Harm		
Release	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Without sufficient elevated storage capacity, customers of the water system could experience low pressure and water outages, and the system's ability to provide a safe and adequate supply of water to the customers could be impaired.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1

21 Number of violation days

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

Violation Base Penalty \$250

One monthly event is recommended from the date of the investigation, January 4, 2007, to the date of screening, January 24, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$952

Violation Final Penalty Total \$275

This violation Final Assessed Penalty (adjusted for limits) \$275

## Economic Benefit Worksheet

Respondent City of Hubbard  
 Case ID No. 32369  
 Reg. Ent. Reference No. RN101178465  
 Media Public Water Supply  
 Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment	\$15,000	4-Jan-2007	1-Dec-2007	0.9	\$45	\$907	\$952
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

The delayed cost includes the amount to increase the elevated storage capacity or pressure tank capacity to a minimum of 100 gallons or 20 gallons per connection, calculated from the date of the investigation to the estimated date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance	\$15,000	TOTAL	\$952
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Screening Date 24-Jan-2007

Docket No. 2007-0104-PWS-E

PCW

Respondent City of Hubbard

Policy Revision 2 (September 2002)

Case ID No. 32369

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101178465

Media [Statute] Public Water Supply

Enf. Coordinator Epifanio Villarreal

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 290.45(f)(3)

Violation Description Failed to secure a water purchase contract that establishes the maximum rate at which water may be drafted on a daily or hourly basis or a uniform purchase rate for the contract period. Specifically, it was noted that the contract did not establish the maximum rate at which water may be drafted on a daily and hourly basis and the contract expired July 1, 2006.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$900

\$100

Violation Events

Number of Violation Events 1

21 Number of violation days

mark only one with an 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 \$21

Violation Final Penalty Total \$110

This violation Final Assessed Penalty (adjusted for limits) \$110

## Economic Benefit Worksheet

Respondent City of Hubbard  
 Case ID No. 32369  
 Reg. Ent. Reference No. RN101178465  
 Media 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
<small>No commas or \$</small>							

### Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$500	4-Jan-2007	1-Nov-2007	0.8	\$21	n/a	\$21

Notes for DELAYED costs

The delayed cost includes the amount to provide a water purchase contract that establishes a maximum purchase rate, calculated from the investigation to the estimated date of compliance.

### Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$21

# Compliance History

Customer/Respondent/Owner-Operator: CN600626311 City of Hubbard Classification: AVERAGE Rating: 6.36  
Regulated Entity: RN101178465 CITY OF HUBBARD Classification: Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1090002  
WATER LICENSING LICENSE 1090002

Location: 220 SOUTH MAGNOLIA AVENUE, HUBBARD, TX

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: January 22, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 22, 2002 to January 22, 2007

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

Name: Epifanio Villarreal Phone: 210-403-4033

## 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.)

01/18/2007 (535600)

05/05/2003 (34707)

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

Date: 03/10/2003 (26893)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.44(h)(1)(A)

Description: Failure to prohibit water connections to establishments where an actual or potential contamination or system hazard exists without an air gap separation or an approved backflow prevention assembly between the regulated entity and the source of the contamination.

Date: 05/02/2003 (34707)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.44(h)(1)(A)

Description: Failure to prohibit water connections to establishments where an actual or potential contamination or system hazard exists without an air gap separation or an approved backflow prevention assembly between the regulated entity and the source of the contamination.

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 HUBBARD  
RN101178465**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2007-0104-PWS-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Hubbard ("the City") under the authority of TEX. HEALTH & SAFETY CODE ch. 341 and 30 TEX. ADMIN. CODE ch. 290. The Executive Director of the TCEQ, represented by the Litigation Division, and the City represented by Mr. Kerry L. Haliburton of the law firm of Naman Howell Smith & Lee, L.L.P., appear before the Commission and together stipulate that:

1. The City owns and operates a public water supply system located at 220 South Magnolia Avenue, Hubbard, Hill County, Texas (the "Facility") that has 622 service connections and serves at least 25 people per day for at least 60 days per year.
2. This Agreed Order is entered into pursuant to TEX. HEALTH & SAFETY CODE § 341.049. The Commission has jurisdiction of this matter pursuant to TEX. HEALTH & SAFETY CODE § 341.031 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 341 and TCEQ rules.
3. 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.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about February 6, 2007.
5. 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.

6. An administrative penalty in the amount of seven hundred fifteen dollars (\$715.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Seven hundred fifteen dollars (\$715.00) of the administrative penalty shall be conditionally offset by the City's completion of a Supplemental Environmental Project (SEP) as defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
7. 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.
8. 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.
9. The Executive Director recognizes that the City has implemented the following corrective measures at the Facility:
  - a. the City requested an exception to the sanitary control easement requirement on April 13, 2007. The exception request was approved on April 30, 2007.
  - b. the City submitted a copy of the backflow prevention test report on January 16, 2007.
10. 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.
11. 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.
12. 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

The City, as owner and operator of the Facility, is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 290.41(c)(1)(F) by failing to provide a sanitary control easement or an approved exception to the easement requirement that covers the land within 150 feet of well number 1.
2. 30 TEX. ADMIN. CODE § 290.44(h)(4) by failing to have backflow prevention assemblies tested and certified to be operating within specifications at least annually by a recognized backflow prevention assembly tester.
3. 30 TEX. ADMIN. CODE § 290.45(b)(1)(D)(iv) and TEX. HEALTH & SAFETY CODE § 341.0315(c) by failing to provide an elevated storage capacity of 100 gallons per connection or pressure tank capacity of 20 gallons per connection.
4. 30 TEX. ADMIN. CODE § 290.45(f)(3) by failing to secure a water purchase contract that establishes the maximum rate at which water may be drafted on a daily or hourly basis or a uniform purchase rate for the contract period.

### 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 administrative penalties as set forth in Section I, Paragraph 6 above. The payment of these administrative penalties and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only those matters described here. 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 "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: City of Hubbard, Docket No. 2007-0104-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. The City shall implement and complete a Supplemental Environmental Project ("SEP") in accordance with TEX. WATER CODE § 7.067 and as set forth in Section I, Paragraph 6, above. Seven hundred fifteen dollars (\$715.00) of the assessed administrative penalty shall be offset

with the condition that the City implement and complete the SEP pursuant to the terms of the SEP as defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. The City shall undertake the following technical requirements:
  - a. Within 60 days after the effective date of this Agreed Order, the City shall obtain a water purchase contract that establishes a maximum rate at which water may be drafted on a daily or hourly basis or uniform purchase rate for the contract period, in accordance with 30 TEX. ADMIN. CODE § 290.45.
  - b. Within 75 days after the effective date of this Agreed Order, the City shall submit written certification as described below in 3.e., and include supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision 3.a.
  - c. Within 180 days after the effective date of this Agreed Order, the City shall provide either:
    - i. an elevated storage capacity of 100 gallons per connection or pressure tank capacity of 20 gallons per connection in accordance with the minimum capacity requirements of 30 TEX. ADMIN. CODE § 290.45(b)(1)(D)(iv); or
    - ii. an alternative capacity requirement that complies with a TCEQ-approved alternative capacity requirement request that met the criteria established in 30 TEX. ADMIN. CODE § 290.45(g)(5) in lieu of the minimum capacity requirements of 30 TEX. ADMIN. CODE § 290.45(b)(1)(D)(iv).
  - d. Within 195 days after the effective date of this Agreed Order, the City shall submit written certification as described below, and include supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision 3.c.
  - e. The certifications required by Ordering Provision Nos. 3.b. and 3.d 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:

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

4. 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.
5. 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.
6. 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 the TEX. WATER CODE or the TEX. HEALTH & SAFETY CODE.
7. 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.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order 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.

City of Hubbard  
DOCKET NO. 2007-0104-PSW-E  
Page 6

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*Bergeron Penland*  
For the Executive Director

5/27/08  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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

*Terry F. Reddell*  
Signature

2-5-08  
Date

TERRY F. REDDELL  
Name (Printed or typed)  
Authorized representative of  
City of Hubbard

MAYOR  
Title

Attachment A  
Docket Number: 2007-0104-PWS-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

**Respondent:** City of Hubbard  
**Penalty Amount:** Seven hundred fifteen dollars (\$715)  
**SEP Amount:** Seven hundred fifteen dollars (\$715)  
**Type of SEP:** Pre-approved SEP  
**Third-Party Recipient:** Texas Association of Resource Conservation & Development Areas, Inc. ("RC&D"). *Water or Wastewater Assistance*  
**Location of SEP:** Hill County

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset the administrative Penalty Amount assessed in this Agreed Order for Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**A. Project**

Respondent shall contribute the SEP Amount to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be to the **Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D")** for the *Water or Wastewater Assistance project* in Hill County. Specifically, SEP monies will pay for the labor and disposal costs associated with assistance to low-income residents with shallow, improperly designed, or contaminated drinking water wells or failing wastewater systems, or plugging of abandoned wells. The projects will be administered in accordance with federal, state, and local environmental laws and regulations.

Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

The wastewater portion of this SEP will provide a discernible environmental benefit by preventing the release of sewage into the environment. Raw sewage can carry bacteria, viruses, protozoa (parasitic organisms), helminthes (intestinal worms), and bioaerosols (inhalable molds and fungi). The diseases they may cause range in severity from mild gastroenteritis (causing stomach cramps and

diarrhea) to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis. People can be exposed through:

- Sewage in drinking water sources.
- Direct contact in areas of public access such as in lawns or streets, or waters used for recreation.
- Shellfish harvested from areas contaminated by raw sewage.
- Inhalation and skin absorption.

Sewage overflows may cause damage to the environment. A key concern with sewage overflows is the effect on rivers, lakes, streams, or aquifer systems. In addition to potential spread of disease, sewage in the environment contributes excess nutrients, metals, and toxic pollutants that contaminate water quality, cause excess algae blooms, and kill fish and other organisms in aquatic habitats.

The drinking water portion of this project will protect water sources for drinking, recreation and wildlife from contamination from the failing treatment systems, and protect public health from contaminated drinking water supplies:

C. Minimum Expenditure

Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, Respondent shall contribute the SEP Amount to the Third-Party Recipient. Respondent shall mail the contribution with a copy of the Agreed Order to:

Texas Association of Resource Conservation  
and Development Areas, Inc. (RC&D)  
Attention: Eddi Darilek  
1716 Briarcrest Drive Suite 510  
Bryan, Texas 77802-2700

**3. Records and Reporting**

Concurrent with the payment of the SEP Amount, Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. Respondent shall mail a copy of the check and transmittal letter to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

#### **4. Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

In the event of incomplete performance, the Respondent shall submit a check for any remaining amount due made payable to "Texas Commission on Environmental Quality" with the notation "SEP Refund" and the docket number of the case, and shall send it to:

Litigation Division  
Attention: SEP Coordinator, MC 175  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

#### **5. Publicity**

Any public statements concerning this SEP made by or on behalf of Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

#### **6. Clean Texas Program**

Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

#### **7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.