

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1164-PWS-E **TCEQ ID:** RN101436749 **CASE NO.:** 37970

RESPONDENT NAME: East Cedar Creek Fresh Water Supply District

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: East Cedar Creek FWSD Brookshire, 161 Hammer Road, Mabank, Henderson County</p> <p>TYPE OF OPERATION: Public water supply</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on October 19, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Amanda Henry, Enforcement Division, Enforcement Team 2, MC R-12, (713) 767-3672; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. David O. Burch, Board President, East Cedar Creek Fresh Water Supply District, 161 Hammer Road, Mabank, Texas, 75156 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: April 20 through June 4, 2009</p> <p>Date of NOV/NOE Relating to this Case: June 26, 2009 (NOE)</p> <p>Background Facts: These were record reviews.</p> <p>WATER</p> <p>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) and (q)(2)].</p>	<p>Total Assessed: \$1,320</p> <p>Total Deferred: \$264 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,056</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</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 Facility 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; and</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): 1070167



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	29-Jun-2009	Screening	9-Jul-2009	EPA Due	
	PCW	15-Jul-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	East Cedar Creek Fresh Water Supply District
Reg. Ent. Ref. No.	RN101436749
Facility/Site Region	6-Tyler
Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	37970	No. of Violations	1
Docket No.	2009-1164-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Amanda Henry
		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	\$1,000
ADJUSTMENTS (+/-) TO SUBTOTAL 1		
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.		
Compliance History	32.0% Enhancement	Subtotals 2, 3, & 7 \$320
Notes	Enhancement is due to six dissimilar Notices of Violation ("NOV"s) and one prior final enforcement order containing a denial of liability.	
Culpability	No 0.0% Enhancement	Subtotal 4 \$0
Notes	The Respondent does not meet the culpability criteria.	
Good Faith Effort to Comply Total Adjustments		Subtotal 5 \$0
Economic Benefit	0.0% Enhancement*	Subtotal 6 \$0
Total EB Amounts	\$506	
Approx. Cost of Compliance	\$600	
	*Capped at the Total EB \$ Amount	
SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,320
OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment \$0
Reduces or enhances the Final Subtotal by the indicated percentage.		
Notes		
	Final Penalty Amount	\$1,320
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty \$1,320
DEFERRAL	20.0% Reduction	Adjustment -\$264
Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)		
Notes	Deferral offered for expedited settlement.	
PAYABLE PENALTY		\$1,056

Screening Date 9-Jul-2009	Docket No. 2009-1164-PWS-E	PCW
Respondent East Cedar Creek Fresh Water Supply District	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 37970	<i>PCW Revision October 30, 2008</i>	
Reg. Ent. Reference No. RN101436749		
Media [Statute] Public Water Supply		
Enf. Coordinator Amanda Henry		

Compliance History Worksheet

Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	0	0%
	Other written NOVs	6	12%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<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) 32%

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

Enhancement is due to six dissimilar Notices of Violation ("NOV"s) and one prior final enforcement order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 32%

Screening Date	9-Jul-2009	Docket No.	2009-1164-PWS-E	PCW	
Respondent	East Cedar Creek Fresh Water Supply District		<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	37970	<i>PCW Revision October 30, 2008</i>			
Reg. Ent. Reference No.	RN101436749				
Media [Statute]	Public Water Supply				
Enf. Coordinator	Amanda Henry				
Violation Number	1				
Rule Cite(s)	30 Tex. Admin. Code § 290.46(q)(1) and (q)(2)				
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 record review, it was documented that the distribution lines were dewatered for line repairs on April 7 and April 9, 2009, which resulted in the pressure dropping below 20 pounds per square inch. The Respondent's response to the loss of pressure was inadequate; therefore, a boil water notice was required to be issued.				
Base Penalty				\$1,000	
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
				Percent	50%
>> Programmatic Matrix					
Falsification					
Major Moderate Minor					
<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>					
				Percent	0%
Matrix Notes	Failure to issue a boil water notice may not allow the public to take appropriate measures in response to the low pressure which could result in the delivery of contaminated water that could exceed levels that are protective of human health.				
Adjustment				\$500	
				\$500	
Violation Events					
Number of Violation Events		2	Number of violation days		
		2			
<i>mark only one with an x</i>	daily	<input type="checkbox"/>			
	weekly	<input type="checkbox"/>			
	monthly	<input type="checkbox"/>			
	quarterly	<input type="checkbox"/>			
	semiannual	<input type="checkbox"/>			
	annual	<input type="checkbox"/>			
	single event	<input checked="" type="checkbox"/>			
				Violation Base Penalty	\$1,000
Two single events are recommended (one event for each occurrence).					
Good Faith Efforts to Comply		0.0% Reduction			
		Before NOV	NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>			
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>			
N/A	<input checked="" type="checkbox"/>	(mark with x)			
Notes	The Respondent does not meet the good faith criteria for this violation.				
Violation Subtotal				\$1,000	
Economic Benefit (EB) for this violation		Statutory Limit Test			
Estimated EB Amount		\$506	Violation Final Penalty Total		
			\$1,320		
This violation Final Assessed Penalty (adjusted for limits)				\$1,320	

Economic Benefit Worksheet

Respondent: East Cedar Creek Fresh Water Supply District
Case ID No.: 37970
Reg. Ent. Reference No.: RN101436749
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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling	\$100	20-Apr-2009	30-Jun-2010	1.19	\$6	n/a	\$6
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs include the estimated amount to 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 when appropriate, calculated from the investigation date 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				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)	\$500	8-Apr-2009	10-Apr-2009	0.00	\$0	\$500	\$500

Notes for AVOIDED costs

The avoided cost includes the amount necessary to provide a boil water notice, calculated for the 24 hour time period that the notice should have been issued for the two occurrences.

Approx. Cost of Compliance

\$600

TOTAL

\$506

Compliance History Report

Customer/Respondent/Owner-Operator: CN600629935 EAST CEDAR CREEK FRESH WATER SUPPLY DISTRICT
Classification: Rating:

Regulated Entity: RN101436749 EAST CEDAR CREEK FWSD
BROOKSHIRE Classification: Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1070167
WATER LICENSING LICENSE 1070167

Location: 161 HAMMER RD, MABANK, HENDERSON COUNTY, TEXAS

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: July 09, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 09, 2004 to July 09, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Amanda Henry Phone: 713-767-3672

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site :

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

Effective Date: 03/06/2006

ADMINORDER 2005-1158-PWS-E

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(5)

5A THC Chapter 341, SubChapter A 341.0315(c)

Description: Exceeded the maximum contaminant level ("MCL") of 0.060 mg/L for haloacetic acids ("HAA5") during the fourth quarter of 2004 at the Brookshire Facility based on the running annual average ("RAA").

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)

5A THC Chapter 341, SubChapter A 341.0315(c)

Description: Exceeded the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for total trihalomethanes ("TTHM") during the third quarter of 2004 at the B. A. McKay and Brookshire Facilities based on the running annual average ("RAA").

- 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 08/16/2004 (275527)
 2 06/03/2005 (381275)
 3 06/29/2005 (397578)
 4 04/13/2006 (457483)
 5 11/27/2006 (516314)
 6 05/18/2007 (652331)
 7 08/10/2007 (652710)
 8 11/15/2007 (653088)

9 12/10/2007 (601044)
 10 02/05/2008 (652074)
 11 02/08/2008 (652150)
 12 05/15/2008 (654783)
 13 02/26/2009 (724794)

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

Date: 08/25/2004 (275527) CN600629935
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(A)(i)
 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(A)(ii)
 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(A)(iii)
 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(B)(i)
 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(B)(ii)
 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(B)(iii)
 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(B)(iv)
 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(C)(i)
 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(C)(ii)
 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(C)(iii)
 Description: Failure to provide proper calibration equipment and to calibrate according to manufacturer and TCEQ rules.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(6)(E)(ii)
 Description: Failure to provide adequate containment facilities for all liquid chemical storage tanks.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)
 Description: Failure to implement good maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(5)
 Description: Failure to monitor the disinfectant residual at least once per day at representative locations in the distribution system.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter F 290.121
 Description: Failure to maintain an up-to-date chemical and microbiological monitoring plan.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(2)(A)
 Description: Failure to meet the Commissions minimum capacity requirements. These requirements include: a raw water pump capacity of 0.6 gallons per minute per connection with the largest pump out-of-service.

Date: 06/06/2005 (381275) CN600629935
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)
 Description: Failure to implement good maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment.

Date: 04/17/2006 (457483) CN600629935
 Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)
Description: Failure to implement good maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)
Description: Failure to inspect all tanks annually.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(B)(iii)
Description: Failure to calibrate online turbidimeters with primary standards at least once every three months.

Date: 11/30/2006 (516314) CN600629935
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)

Description: Failure to implement good maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)

Description: Failure to inspect all tanks annually.
Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(B)(iii)
Description: Failure to calibrate online turbidimeters with primary standards at least once every three months.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(2)

Description: Failure to maintain records accessible for review during investigations.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)

Description: Failure to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(11)(D)(i)

Description: Failure to provide rate of flow controllers for the filters.
Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(13)
Description: Failure to properly identify all lines in the plant.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(C)(i)

Description: Failure to properly calibrate manual colorimeter.
Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(11)(F)(vi)
Description: Failure to install a backflow prevention device on the surface wash system.

Date: 12/13/2007 (601044) CN600629935
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)

Description: Failure to implement good maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(B)(iii)

Description: Failure to calibrate online turbidimeters with primary standards at least once every three months.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(2)

Description: Failure to maintain records accessible for review during investigations.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)

Description: Failure to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and

equipment.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(11)(D)(i)
Description: Failure to provide rate of flow controllers for the filters.
Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(13)
Description: Failure to properly identify all lines in the plant.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(C)(i)
Description: Failure to properly calibrate manual colorimeter.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(11)(F)(vi)
Description: Failure to install a backflow prevention device on the surface wash system.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(i)(II)
Description: Failure to record the amount of chlorine used daily.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(l)
Description: Failure to flush all dead end mains at least once a month.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(5)(C)
Description: Failure take chlorine residuals at representative locations in the distribution once per day.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(3)(C)
Description: Failure to provide functional standby disinfection equipment for chlorine.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(10)(D)(ii)
Description: Failure to provide sludge removal by mechanical means or hopper-bottomed basins.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(A)(ii)
Description: Failure to check the benchtop pH meter with one known buffer solution each time a series of samples is run.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(A)(i)
Description: Failure to calibrate benchtop pH meters to manufacturers specifications each day.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(B)(i)
Description: Failure to restandardize secondary standards each time a primary calibration is performed on the benchtop turbidimeter.
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 the benchtop turbidimeter 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(m)
Description: Failure to maintain the sludge lagoons free of excessive solids.

Date: 03/02/2009 (724794) CN600629935

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)
Description: Failure to implement good maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(2)(A)
Description: Failure to meet the Commissions minimum capacity requirements. These requirements include: a raw water pump capacity of 0.6 gallons per minute per connection with the largest pump out-of-service.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(11)(D)(i)

Description: Failure to provide rate of flow controllers for the filters.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(13)

Description: Failure to properly identify all lines in the plant.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(i)(II)

Description: Failure to record the amount of chlorine used daily.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(l)

Description: Failure to flush all dead end mains at least once a month.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(5)(C)

Description: Failure take chlorine residuals at representative locations in the distribution once per day.
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(3)(C)

Description: Failure to provide functional standby disinfection equipment for chlorine.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(10)(D)(ii)

Description: Failure to provide sludge removal by mechanical means or hopper-bottomed basins.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(A)(ii)

Description: Failure to check the benchtop pH meter with one known buffer solution each time a series of samples is run.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(A)(i)

Description: Failure to calibrate benchtop pH meters to manufacturers specifications each day.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(B)(i)

Description: Failure to restandardize secondary standards each time a primary calibration is performed on the benchtop turbidimeter.
 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 the benchtop turbidimeter 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(m)

Description: Failure to maintain the sludge lagoons free of excessive solids.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.41(d)(3)(A)

Description: Failure to maintain adequate drainage at the surface water treatment plant.
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)

Description: Failure to maintain the clarifier in good working condition.

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
EAST CEDAR CREEK FRESH
WATER SUPPLY DISTRICT
RN101436749

§ BEFORE THE
§
§
§ TEXAS COMMISSION ON
§
§ ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-1164-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 East Cedar Creek Fresh Water Supply District ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appears before the Commission and together stipulate that:

1. The Respondent owns and operates a public water supply at 161 Hammer Road in Mabank, Henderson County, Texas (the "Facility") that has approximately 3,492 service connections and serves at least 25 people per day for at least 60 days per year.
2. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
3. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about July 1, 2009.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of One Thousand Three Hundred Twenty Dollars (\$1,320) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Fifty-Six Dollars (\$1,056) of the administrative penalty and Two Hundred Sixty-Four Dollars (\$264) is deferred contingent upon

- the Respondent'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 Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent 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 Respondent have 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 Respondent 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 Respondent is alleged to have 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) and (q)(2), as documented during a record review conducted between April 20 and June 4, 2009.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the Respondent'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: East Cedar Creek Fresh Water Supply District, Docket No. 2009-1164-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 Respondent 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 Facility 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, in accordance with 30 TEX. ADMIN. CODE § 290.46; and
- 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 fines 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 78701-3734

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent 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 Respondent 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 Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, 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

Date 9/13/09

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

Date 8-19-2009

David O. Burch
Name (Printed or typed)
Authorized Representative of
East Cedar Creek Fresh Water Supply District

Board President
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.

