

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2009-1175-PWS-E **TCEQ ID:** RN101456937 **CASE NO.:** 38025
RESPONDENT NAME: Luella Special Utility 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: Luella SUD, 1370 Bennett Road, Sherman, Grayson 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 26, 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. Dwain Roberts, President, Luella Special Utility District, 36 LWSC Road, Sherman, Texas 75090-5224 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: July 8, 2009</p> <p>Date of NOV/NOE Relating to this Case: July 22, 2009 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to provide emergency power that will deliver water at a rate of 0.35 gallons per minute ("gpm") per connection in the event of the loss of normal power supply [30 TEX. ADMIN. CODE § 290.45(b)(1)(D)(v) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].</p> | <p>Total Assessed: \$280</p> <p>Total Deferred: \$56 <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: \$224</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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Corrective Actions:</p> <p>The Executive Director recognizes that the Respondent is in the planning stages to install a generator that was recently purchased to provide emergency power to the Facility.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 180 days after the effective date of this Agreed Order, provide emergency power that will deliver water a minimum of 0.35 gpm per connection; and</p> <p>b. Within 195 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p> |

Additional ID No(s): PWS ID No. 0910032

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) PCW Revision October 30, 2008

| | | | | | | |
|----------------------|----------|-------------|-----------|-------------|---------|--|
| TCEQ DATES | Assigned | 20-Jul-2009 | Screening | 24-Jul-2009 | EPA Due | |
| | PCW | 29-Jul-2009 | | | | |

| | | | |
|--|---------------------------------|--------------------|-------|
| RESPONDENT/FACILITY INFORMATION | | | |
| Respondent | Luella Special Utility District | | |
| Reg. Ent. Ref. No. | RN101456937 | | |
| Facility/Site Region | 4-Dallas/Fort Worth | Major/Minor Source | Minor |

| | | | |
|---------------------------------|---------------------|-----------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 38025 | No. of Violations | 1 |
| Docket No. | 2009-1175-PWS-E | Order Type | 1660 |
| Media Program(s) | Public Water Supply | Government/Non-Profit | Yes |
| Multi-Media | | Enf. Coordinator | Yullya Dunaway |
| | | 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: 12.0% Enhancement

Culpability **Subtotal 4**

Notes: 0.0% Enhancement

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

Economic Benefit **Subtotal 6**

Total EB Amounts 0.0% Enhancement*
 Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.
 Notes: 0.0%

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: 20.0% Reduction

PAYABLE PENALTY

Screening Date 24-Jul-2009

Docket No. 2009-1175-PWS-E

PCW

Respondent Luella Special Utility District

Policy Revision 2 (September 2002)

Case ID No. 38025

PCW Revision October 30, 2008

Reg. Ent. Reference No. RM101456937

Media [Statute] Public Water Supply

Enf. Coordinator Yuliya Dunaway

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 | 1 | 2% |
| 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 judgments 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) 12%

>> 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 penalty enhancement is due to two prior NOVs for violations that are same as or similar to the violations included in the current enforcement action and one dissimilar NOV.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 12%

| | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|---|--|--|--|--------------------|--|--|---------|---|--|-----------|--|--|------------|--|--|--------|--|--|--------------|--|--|-------------------------------------|
| Screening Date 24-Jul-2009 | Docket No. 2009-1175-PWS-E | PCW | | | | | | | | | | | | | | | | | | | | | | |
| Respondent Luella Special Utility District | | <small>Policy Revision 2 (September 2002)</small> | | | | | | | | | | | | | | | | | | | | | | |
| Case ID No. 38025 | | <small>PCW Revision October 30, 2008</small> | | | | | | | | | | | | | | | | | | | | | | |
| Reg. Ent. Reference No. RN101456937 | | | | | | | | | | | | | | | | | | | | | | | | |
| Media [Statute] Public Water Supply | | | | | | | | | | | | | | | | | | | | | | | | |
| Enf. Coordinator Yuliya Dunaway | | | | | | | | | | | | | | | | | | | | | | | | |
| Violation Number 1 | | | | | | | | | | | | | | | | | | | | | | | | |
| Rule Cite(s) | 30 Tex. Admin. Code § 290.45(b)(1)(D)(v) and Tex. Health & Safety Code § 341.0315(c) | | | | | | | | | | | | | | | | | | | | | | | |
| Violation Description | Failed to provide emergency power that will deliver water at a rate of 0.35 gallons per minute ("gpm") per connection in the event of the loss of normal power supply. Specifically, at the time of the record review, it was documented that the Facility failed to provide an emergency power source, such as a backup generator, which is required for facilities that have no elevated storage and serve 250 or more service connections. | | | | | | | | | | | | | | | | | | | | | | | |
| | Base Penalty | \$1,000 | | | | | | | | | | | | | | | | | | | | | | |
| >> Environmental, Property and Human Health Matrix | | | | | | | | | | | | | | | | | | | | | | | | |
| OR | Harm | | | | | | | | | | | | | | | | | | | | | | | |
| | Release Major Moderate Minor | | | | | | | | | | | | | | | | | | | | | | | |
| | Actual | <table border="1" style="width:100%;"><tr><td style="width:33%;"></td><td style="width:33%;"></td><td style="width:33%;"></td></tr></table> | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| | Potential | <table border="1" style="width:100%;"><tr><td style="width:33%; text-align: center;">x</td><td style="width:33%;"></td><td style="width:33%;"></td></tr></table> | x | | | Percent 25% | | | | | | | | | | | | | | | | | | |
| x | | | | | | | | | | | | | | | | | | | | | | | | |
| >> Programmatic Matrix | | | | | | | | | | | | | | | | | | | | | | | | |
| | Falsification Major Moderate Minor | | | | | | | | | | | | | | | | | | | | | | | |
| | | <table border="1" style="width:100%;"><tr><td style="width:33%;"></td><td style="width:33%;"></td><td style="width:33%;"></td></tr></table> | | | | Percent 0% | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| Matrix Notes | Without any emergency power, customers of the water supply could experience water outages and the Facility's ability to provide a safe and reliable water supply could be compromised. | | | | | | | | | | | | | | | | | | | | | | | |
| | Adjustment | \$750 | | | | | | | | | | | | | | | | | | | | | | |
| | | | \$250 | | | | | | | | | | | | | | | | | | | | | |
| Violation Events | | | | | | | | | | | | | | | | | | | | | | | | |
| | Number of Violation Events | 1 | Number of violation days | | | | | | | | | | | | | | | | | | | | | |
| | | 16 | | | | | | | | | | | | | | | | | | | | | | |
| | mark only one with an x | <table border="1" style="width:100%;"><tr><td style="width:33%;">daily</td><td style="width:33%;"></td><td style="width:33%;"></td></tr><tr><td>weekly</td><td></td><td></td></tr><tr><td>monthly</td><td style="text-align: center;">x</td><td></td></tr><tr><td>quarterly</td><td></td><td></td></tr><tr><td>semiannual</td><td></td><td></td></tr><tr><td>annual</td><td></td><td></td></tr><tr><td>single event</td><td></td><td></td></tr></table> | daily | | | weekly | | | monthly | x | | quarterly | | | semiannual | | | annual | | | single event | | | Violation Base Penalty \$250 |
| daily | | | | | | | | | | | | | | | | | | | | | | | | |
| weekly | | | | | | | | | | | | | | | | | | | | | | | | |
| monthly | x | | | | | | | | | | | | | | | | | | | | | | | |
| quarterly | | | | | | | | | | | | | | | | | | | | | | | | |
| semiannual | | | | | | | | | | | | | | | | | | | | | | | | |
| annual | | | | | | | | | | | | | | | | | | | | | | | | |
| single event | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| | One monthly event is recommended, calculated from the date of the record review, July 8, 2009, to the date of screening, July 24, 2009. | | | | | | | | | | | | | | | | | | | | | | | |
| Good Faith Efforts to Comply | | | | | | | | | | | | | | | | | | | | | | | | |
| | 0.0% Reduction | | \$0 | | | | | | | | | | | | | | | | | | | | | |
| | Before NOV NOV to EDPRP/Settlement Offer | | | | | | | | | | | | | | | | | | | | | | | |
| | Extraordinary | <table border="1" style="width:100%;"><tr><td style="width:50%;"></td><td style="width:50%;"></td></tr></table> | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| | Ordinary | <table border="1" style="width:100%;"><tr><td style="width:50%;"></td><td style="width:50%;"></td></tr></table> | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | |
| | N/A | x (mark with x) | | | | | | | | | | | | | | | | | | | | | | |
| Notes | The Respondent does not meet the good faith criteria for this violation. | | | | | | | | | | | | | | | | | | | | | | | |
| | Violation Subtotal | | \$250 | | | | | | | | | | | | | | | | | | | | | |
| Economic Benefit (EB) for this violation | | | | | | | | | | | | | | | | | | | | | | | | |
| | Estimated EB Amount | \$1,492 | Violation Final Penalty Total \$280 | | | | | | | | | | | | | | | | | | | | | |
| Statutory Limit Test | | | | | | | | | | | | | | | | | | | | | | | | |
| | This violation Final Assessed Penalty (adjusted for limits) | | \$280 | | | | | | | | | | | | | | | | | | | | | |

Economic Benefit Worksheet

Respondent Luella Special Utility District
Case ID No. 38025
Reg. Ent. Reference No. RN101466937
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 | \$20,000 | 8-Jul-2009 | 1-Aug-2010 | 1.07 | \$71 | \$1,421 | \$1,492 |
| 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 | | | | 0.00 | \$0 | n/a | \$0 |
| 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 install an emergency power generator, calculated from the date of the record review 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) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance

\$20,000

TOTAL

\$1,492

Compliance History Report

| | | | |
|---|--|-----------------|--------------|
| Customer/Respondent/Owner-Operator: | CN603083288 Luella Special Utility District | Classification: | Rating: |
| Regulated Entity: | RN101456937 LUELLA SUD | Classification: | Site Rating: |
| ID Number(s): | PUBLIC WATER SYSTEM/SUPPLY REGISTRATION | | 0910032 |
| Location: | 1370 BENNETT RD, SHERMAN, GRAYSON COUNTY, TX | | |
| TCEQ Region: | REGION 04 - DFW METROPLEX | | |
| Date Compliance History Prepared: | July 22, 2009 | | |
| Agency Decision Requiring Compliance History: | Enforcement | | |
| Compliance Period: | July 22, 2004 to July 22, 2009 | | |

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

Name: Yuliya Dunaway Phone: 210-403-4077

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.

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 | 10/11/2005 | (432254) |
| 2 | 03/10/2009 | (727219) |
| 3 | 03/26/2009 | (739601) |
| 4 | 07/17/2009 | (761511) |

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

- | | | | |
|--------------|---|-------------|--------------------------|
| Date: | 10/13/2005 (432254) | CN603083288 | Classification: Minor |
| Self Report? | NO | | |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.42(e)(4)(A) | | |
| Description: | Failure to provide a full-face self-contained breathing apparatus or supplied air respirator that meets OSHA standards for construction and operation which must be located outside each chlorination room in an accessible location. | | |
| Date: | 03/03/2009 (727219) | CN603083288 | Classification: Moderate |
| Self Report? | NO | | |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(D)(v) | | |
| Description: | Failure to provide emergency power to deliver water to the distribution system in the event of the loss of normal power supply or an emergency interconnection with another public water supply. Under emergency conditions, the combined systems must be able to supply at least 0.35 gallons per minute per connection. | | |
| Date: | 03/27/2009 (739601) | CN603083288 | Classification: Moderate |
| Self Report? | NO | | |

Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(D)(v)
Description: Failure to provide emergency power to deliver water to the distribution system in the event of the loss of normal power supply or an emergency interconnection with another public water supply. Under emergency conditions, the combined systems must be able to supply at least 0.35 gallons per minute per connection.

- 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
LUELLA SPECIAL UTILITY
DISTRICT
RN101456937

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-1175-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 Luella Special Utility 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 appear before the Commission and together stipulate that:

1. The Respondent owns and operates a public water supply at 1370 Bennett Road in Sherman, Grayson County, Texas (the "Facility") that has approximately 1,081 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 27, 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 Two Hundred Eighty Dollars (\$280) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Twenty-Four Dollars (\$224) of the administrative penalty and Fifty-Six Dollars (\$56) 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. The Executive Director recognizes that the Respondent is in the planning stages to install a generator that was recently purchased to provide emergency power to the Facility.
 10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
 11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to provide emergency power that will deliver water at a rate of 0.35 gallons per minute ("gpm") per connection in the event of the loss of normal power supply, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(D)(v) and TEX. HEALTH & SAFETY CODE § 341.0315(c), as documented during a record review conducted on July 8, 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: Luella Special Utility District, Docket No. 2009-1175-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 180 days after the effective date of this Agreed Order, provide emergency power that will deliver water a minimum of 0.35 gpm per connection, as required by 30 TEX. ADMIN. CODE § 290.45.
 - b. Within 195 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 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
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

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.

OCT/12/2009/MON 01:49 PM

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

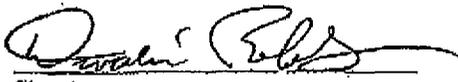
10/19/2009
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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


Signature

10-14-09
Date

Dwain Roberts
Name (Printed or typed)
Authorized Representative of
Luella Special Utility District

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.

