

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2009-1176-PWS-E **TCEQ ID:** RN101428282 **CASE NO.:** 38019  
**RESPONDENT NAME:** City of Rotan

<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"/> IMMEDIATE AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> City of Rotan, 302 West Sammy Baugh Avenue, Rotan, Fisher County</p> <p><b>TYPE OF OPERATION:</b> Municipal public water supply</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on October 26, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Rebecca Clausewitz, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4012; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  <b>Respondent:</b> The Honorable Jerry Marshall, Mayor, City of Rotan, 302 West Sammy Baugh Avenue, Rotan, Texas 79546-4411  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> April 27, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> June 19, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WATER</b></p> <p>1) Failure to compile a thorough and up-to-date plant operations manual for operator review and reference [30 TEX. ADMIN. CODE § 290.42(1)].</p> <p>2) Failure to verify the accuracy of manual disinfectant residual analyzers at least once every 30 days using chlorine solutions of known concentrations [30 TEX. ADMIN. CODE § 290.46(s)(2)(C)(i)].</p> <p>3) Failure to ensure that a backflow prevention assembly or an air gap is installed at any location where a potential contamination hazard exists [30 TEX. ADMIN. CODE § 290.44(h)(1)(A)].</p> <p>4) Failure to provide two or more service pumps that have a total capacity of 2.0 gallons per minute ("gpm") per connection [30 TEX. ADMIN. CODE § 290.45(b)(1)(D)(iii) and TEX. HEALTH &amp; SAFETY CODE § 341.0315(e)].</p> <p>5) Failure to maintain an intruder-resistant fence around the north tower elevated storage tank [30 TEX. ADMIN. CODE § 290.42(m)].</p>	<p><b>Total Assessed:</b> \$2,677</p> <p><b>Total Deferred:</b> \$535  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$2,142</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Compile and begin maintaining a thorough and up-to-date plant operations manual for operator review and reference;</p> <p>ii. Begin verifying the accuracy of manual disinfectant residual analyzers at least once every 30 days using chlorine solutions of known concentrations; and</p> <p>iii. Repair the fence surrounding the north tower elevated storage tank to ensure that it is intruder-resistant.</p> <p>b. Within 60 days after the effective date of this Agreed Order:</p> <p>i. Submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a;</p> <p>ii. Ensure a backflow prevention assembly or an air gap is installed at the funeral home and at the dental clinic; and</p> <p>iii. Provide two or more service pumps that have a total capacity of 2.0 gpm per connection.</p> <p>c. Within 75 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 Provisions b.ii and iii.</p>

Additional ID No(s): PWS ID No. 0760002



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	22-Jun-2009	Screening	13-Jul-2009	EPA Due	
	PCW	17-Jul-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	City of Rotan
Reg. Ent. Ref. No.	RN101428282
Facility/Site Region	3-Abilene
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	38019	No. of Violations	5
Docket No.	2009-1176-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Rebecca Clausewitz
		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

<b>Penalty Calculation Section</b>		
<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	Subtotal 1	\$2,550
<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>		
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>		
<b>Compliance History</b>	5.0% Enhancement	Subtotals 2, 3, & 7
Notes	The enhancement is due to one prior Notice of Violation ("NOV") containing violations that are the same as or similar to the violations in the current enforcement action.	\$127
<b>Culpability</b>	No	0.0% Enhancement
Notes	The Respondent does not meet the culpability criteria.	Subtotal 4
		\$0
<b>Good Faith Effort to Comply Total Adjustments</b>		Subtotal 5
		\$0
<b>Economic Benefit</b>	0.0% Enhancement*	Subtotal 6
Total EB Amounts	\$573	
Approx. Cost of Compliance	\$7,825	*Capped at the Total EB \$ Amount
		\$0
<b>SUM OF SUBTOTALS 1-7</b>	Final Subtotal	\$2,677
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>		Adjustment
Notes		\$0
		Final Penalty Amount
		\$2,677
<b>STATUTORY LIMIT ADJUSTMENT</b>		Final Assessed Penalty
		\$2,677
<b>DEFERRAL</b>	20.0% Reduction	Adjustment
Notes	Deferral offered for expedited settlement.	-\$535
<b>PAYABLE PENALTY</b>		\$2,142

Screening Date 13-Jul-2009

Docket No. 2009-1176-PWS-E

PCW

Respondent City of Rotan

Policy Revision 2 (September 2002)

Case ID No. 38019

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101428282

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

## Compliance History Worksheet

## &gt;&gt; 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)	1	5%
	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 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%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

## &gt;&gt; Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance History Notes

The enhancement is due to one prior Notice of Violation ("NOV") containing violations that are the same as or similar to the violations in the current enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 5%

<b>Screening Date</b>	13-Jul-2009	<b>Docket No.</b>	2009-1176-PWS-E	<b>PCW</b>
<b>Respondent</b>	City of Rotan	Policy Revision 2 (September 2002)		
<b>Case ID No.</b>	38019	PCW Revision October 30, 2008		
<b>Reg. Ent. Reference No.</b>	RN101428282			
<b>Media [Statute]</b>	Public Water Supply			
<b>Enf. Coordinator</b>	Rebecca Clausewitz			
<b>Violation Number</b>	1			
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 290.42(i)			
<b>Violation Description</b>	Failed to compile a thorough and up-to-date plant operations manual for operator review and reference.			
<b>Base Penalty</b>				\$1,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential			0%	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		X			10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment \$900

\$100

Violation Events

Number of Violation Events: 1      77 Number of violation days

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

Violation Base Penalty \$100

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$106

This violation Final Assessed Penalty (adjusted for limits) \$106

## Economic Benefit Worksheet

**Respondent:** City of Rotan

**Case ID No.:** 38019

**Reg. Ent. Reference No.:** RN101428282

**Media:** Public Water Supply

**Violation No.:** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**Delayed Costs**

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	\$100	27-Apr-2009	31-Mar-2010	0.93	\$5	n/a	\$5
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 cost includes the estimated amount to prepare a plant operations manual, 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				0.00	\$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

\$100

**TOTAL**

\$5

<b>Screening Date:</b> 13-Jul-2009	<b>Docket No.:</b> 2009-1176-PWS-E	<b>PCW</b>		
<b>Respondent:</b> City of Rotan	<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.:</b> 38019	<i>PCW Revision October 30, 2008</i>			
<b>Reg. Ent. Reference No.:</b> RN101428282				
<b>Media [Statute]:</b> Public Water Supply				
<b>Enf. Coordinator:</b> Rebecca Clausewitz				
<b>Violation Number:</b> 2				
<b>Rule Cite(s):</b>	30 Tex. Admin. Code § 290.46(s)(2)(C)(i)			
<b>Violation Description:</b>	Failed to verify the accuracy of manual disinfectant residual analyzers at least once every 30 days using chlorine solutions of known concentrations. Specifically, on the date of the investigation, there were no chlorine standards available with which to measure the accuracy of the analyzer in use at the Facility.			
<b>Base Penalty:</b>		\$1,000		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual			
	Potential	X		
				<b>Percent</b> 25%
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
				<b>Percent</b> 0%
<b>Matrix Notes</b>	Failure to ensure that the manual disinfectant residual analyzer is accurate could affect dosing or maintenance of the disinfectant level in the water supplied to the customers of the Facility, exposing the customers to significant amounts of contaminants, which would exceed levels that are protective of human health.			
<b>Adjustment:</b>				\$750
				<b>\$250</b>
<b>Violation Events</b>				
<b>Number of Violation Events:</b>		3	<b>Number of violation days:</b> 77	
<i>mark only one with an x</i>	daily			
	weekly			
	monthly	X		
	quarterly			
	semiannual			
	annual			
single event				
				<b>Violation Base Penalty</b> \$750
Three monthly events are recommended, calculated from the date of the investigation, April 27, 2009, to the date of case screening, July 13, 2009.				
<b>Good Faith Efforts to Comply</b>			0.0% Reduction	\$0
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary				
Ordinary				
N/A	X	(mark with x)		
<b>Notes:</b>	The Respondent does not meet the good faith criteria for this violation.			
<b>Violation Subtotal:</b>				\$750
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>	
<b>Estimated EB Amount:</b>		\$26	<b>Violation Final Penalty Total:</b> \$788	
<b>This violation Final Assessed Penalty (adjusted for limits):</b>				\$788

### Economic Benefit Worksheet

**Respondent:** City of Rotan  
**Case ID No.:** 38019  
**Reg. Ent. Reference No.:** RN101428282  
**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	Overtime Costs	EB Amount
No commas or \$							

**Delayed Costs**

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				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

**Avoided Costs**

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

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]	\$25	27-Mar-2009	27-Apr-2009	1.00	\$1	\$25	\$26
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated labor cost to calibrate the disinfectant residual analyzer for the 30-day period prior to the date of the investigation.

Approx. Cost of Compliance

\$25

TOTAL

\$26

<b>Screening Date</b> 13-Jul-2009	<b>Docket No.</b> 2009-1176-PWS-E	<b>PCW</b>		
<b>Respondent</b> City of Rotan	<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.</b> 38019	<i>PCW Revision October 30, 2008</i>			
<b>Reg. Ent. Reference No.</b> RN101428282				
<b>Media [Statute]</b> Public Water Supply				
<b>Enf. Coordinator</b> Rebecca Clausewitz				
<b>Violation Number</b> 3				
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 290.44(h)(1)(A)			
<b>Violation Description</b>	Failed to ensure that a backflow prevention assembly or an air gap is installed at any location where a potential contamination hazard exists. Specifically, the Respondent failed to ensure that backflow prevention assemblies or air gaps are installed at the Weathersby-Ray Funeral Home and the Marshall Dental Clinic.			
<b>Base Penalty</b>		\$1,000		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual			
	Potential	x		
				<b>Percent</b> 25%
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
				<b>Percent</b> 0%
<b>Matrix Notes</b>	Failure to have a backflow prevention assembly or an air gap in place could result in customers of the Facility being exposed to a significant amount of contaminants that could enter the water supply, which would exceed levels that are protective of human health.			
<b>Adjustment</b>				\$750
				\$250
<b>Violation Events</b>				
<b>Number of Violation Events</b>		6	<b>Number of violation days</b>	
		77		
<i>mark only one with an x</i>	daily			
	weekly			
	monthly	x		
	quarterly			
	semiannual			
	annual			
	single event			
				<b>Violation Base Penalty</b> \$1,500
Six monthly events are recommended (three monthly events for each of the two locations), calculated from the date of the investigation, April 27, 2009, to the date of case screening, July 13, 2009.				
<b>Good Faith Efforts to Comply</b>			0.0% Reduction \$0	
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary				
Ordinary				
N/A	x	(mark with x)		
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.			
<b>Violation Subtotal</b>				\$1,500
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b>		\$71	<b>Violation Final Penalty Total</b> \$1,575	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>				\$1,575

## Economic Benefit Worksheet

**Respondent:** City of Rotan

**Case ID No.:** 38019

**Reg. Ent. Reference No.:** RN101428282

**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
No commas or \$							

### Delayed Costs

Equipment	\$1,000	27-Apr-2009	30-Apr-2010	1.01	\$3	\$67	\$71
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 cost includes the actual amount to purchase and install a backflow prevention assembly at the funeral home and the dental clinic (\$500 per device), 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				0.00	\$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**

\$1,000

**TOTAL**

\$71

<b>Screening Date:</b> 13-Jul-2009	<b>Docket No.:</b> 2009-1176-PWS-E	<b>PCW</b>		
<b>Respondent:</b> City of Rotan	<i>Policy Revision 2 (September 2002)</i>			
<b>Case ID No.:</b> 38019	<i>PCW Revision October 30, 2008</i>			
<b>Reg. Ent. Reference No.:</b> RN101428282				
<b>Media [Statute]:</b> Public Water Supply				
<b>Enf. Coordinator:</b> Rebecca Clausewitz				
<b>Violation Number:</b> 4				
<b>Rule Cite(s):</b>	30 Tex. Admin. Code § 290.45(b)(1)(D)(ii) and Tex. Health & Safety Code § 341.0315(c)			
<b>Violation Description:</b>	Failed to provide two or more service pumps that have a total capacity of 2.0 gallons per minute ("gpm") per connection. Specifically, with 889 connections, the Respondent must provide a minimum total service pump capacity of 1,778 gpm. However, the Respondent currently has three service pumps that have a capacity of 340 gpm each for a total service pump capacity of 1,020 gpm, which is a 43% deficiency.			
<b>Base Penalty</b>		\$1,000		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	Harm			
	Major	Moderate	Minor	
Actual				
Potential		x		<b>Percent</b> 10%
<b>&gt;&gt; Programmatic Matrix</b>				
	Major	Moderate	Minor	
				<b>Percent</b> 0%
<b>Matrix Notes</b>	Failure to provide adequate service pump capacity could result in an inadequate supply of water to the wholesale customer and the elevated storage tanks, resulting in possible shortages to the customers of the system.			
<b>Adjustment</b>		\$900		
				\$100
<b>Violation Events</b>				
Number of Violation Events		1	Number of violation days	
		77		
mark only one with an x	daily			
	weekly			
	monthly			
	quarterly	x	<b>Violation Base Penalty</b> \$100	
	semiannual			
	annual			
	single event			
One quarterly event is recommended, calculated from the date of the investigation, April 27, 2009, to the date of case screening, July 13, 2009.				
<b>Good Faith Efforts to Comply</b>			<b>0.0% Reduction</b> \$0	
<small>Before NOV    NOV to EDPRP/Settlement Offer</small>				
Extraordinary				
Ordinary				
N/A	x	(mark with x)		
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.			
<b>Violation Subtotal</b>		\$100		
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>	
Estimated EB Amount		\$459	Violation Final Penalty Total	
			\$105	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>			\$105	

### Economic Benefit Worksheet

**Respondent:** City of Rotan

**Case ID No.:** 38019

**Reg. Ent. Reference No.:** RN101428282

**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
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

**Delayed Costs**

Equipment	\$6,500	27-Apr-2009	30-Apr-2010	1.01	\$22	\$437	\$459
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 cost includes the estimated amount to purchase and install additional service pumps, 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				0.00	\$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

\$6,500

TOTAL

\$459

<b>Screening Date:</b> 13-Jul-2009	<b>Docket No.:</b> 2009-1176-PWS-E	<b>PCW</b>	
<b>Respondent:</b> City of Rotan	<small>Policy Revision 2 (September 2002)</small>		
<b>Case ID No.:</b> 38019	<small>PCW Revision October 30, 2008</small>		
<b>Reg. Ent. Reference No.:</b> RN101428282			
<b>Media [Statute]:</b> Public Water Supply			
<b>Enf. Coordinator:</b> Rebecca Clausewitz			
<b>Violation Number:</b> 5			
<b>Rule Cite(s):</b>	30 Tex. Admin. Code § 290.42(m)		
<b>Violation Description:</b>	Failed to maintain an intruder-resistant fence around the north tower elevated storage tank. Specifically, on the date of the investigation, the fence was noted to have an open area large enough for a person to gain access to the tank.		
<b>Base Penalty:</b>	\$1,000		
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>			
<b>OR</b>	<b>Harm</b>		
	Major	Moderate	Minor
<b>Release Actual:</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Release Potential:</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
			<b>Percent:</b> 10%
<b>&gt;&gt; Programmatic Matrix</b>			
	Major	Moderate	Minor
<b>Falsification:</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
			<b>Percent:</b> 0%
<b>Matrix Notes:</b>	A fence that is not maintained in an intruder-resistant manner could allow trespassers to enter and vandalize the storage tank which may expose customers to a significant amount of contaminants that would not exceed levels protective of human health.		
<b>Adjustment:</b>			\$900
			\$100
<b>Violation Events</b>			
<b>Number of Violation Events:</b>	1	<b>Number of violation days:</b>	77
<small>mark only one with an x</small>	daily	<input type="checkbox"/>	<b>Violation Base Penalty:</b> \$100
	weekly	<input type="checkbox"/>	
	monthly	<input type="checkbox"/>	
	quarterly	<input checked="" type="checkbox"/>	
	semiannual	<input type="checkbox"/>	
	annual	<input type="checkbox"/>	
	single event	<input type="checkbox"/>	
One quarterly event is recommended, calculated from the date of the investigation, April 27, 2009, to the date of case screening, July 13, 2009.			
<b>Good Faith Efforts to Comply</b>			0.0% Reduction \$0
	Before NOV	NOV to EDPRP/Settlement Offer	
<b>Extraordinary:</b>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Ordinary:</b>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>N/A:</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/> (mark with x)	
<b>Notes:</b>	The Respondent does not meet the good faith criteria for this violation.		
<b>Violation Subtotal:</b>			\$100
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>
<b>Estimated EB Amount:</b>	\$13	<b>Violation Final Penalty Total:</b>	\$105
<b>This violation Final Assessed Penalty (adjusted for limits):</b>			\$105

### Economic Benefit Worksheet

**Respondent:** City of Rotan  
**Case ID No.:** 38019  
**Reg. Ent. Reference No.:** RN101428282  
**Media:** Public Water Supply  
**Violation No.:** 5

<b>Percent Interest</b>	<b>Years of Depreciation</b>
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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$200	27-Apr-2009	31-Mar-2010	0.93	\$1	\$12	\$13
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 cost includes the estimated amount to repair the fence surrounding the north tower tank, 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				0.00	\$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

\$200

**TOTAL**

\$13

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600738397 City of Rotan Classification: AVERAGE Rating: 2.00  
Regulated Entity: RN101428282 City of Rotan Classification: Site Rating:  
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0760002  
WATER LICENSING LICENSE 0760002  
Location: 302 W SAMMY BAUGH AVE, ROTAN, FISHER COUNTY, TX  
TCEQ Region: REGION 03 - ABILENE  
Date Compliance History Prepared: July 16, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: July 16, 2004 to July 16, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:  
Name: Rebecca Clausewitz Phone: (210) 403-4012

## 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? 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 judgments, 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 | 11/05/2004 | (340183) |
| 2 | 04/08/2005 | (377085) |
| 3 | 05/15/2007 | (558361) |
| 4 | 06/17/2009 | (748765) |

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

Date: 04/08/2005 (377085) CN600738397  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.42(b)(4)  
Description: FAILURE TO MONITOR FOR FREE AMMONIA IN WATER SYSTEM

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(F)  
Description: FAILURE TO MAINTAIN RECORDS OF FREE AMMONIA MONITORING ACTIVITIES

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(1)(A)  
Description: FAILURE TO PROVIDE PUBLIC NOTICE FOR CHLORAMINE DISINFECTION PROCESS

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.44(h)(4)(A)(i)  
Description: FAILURE COMPLETE THE INSTALLATION AND TESTING OF BACKFLOW PREVENTION DEVICES

Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.45(f)(3)		
Description:	FAILURE TO PROVIDE SIGNED PURCHASE WATER CONTRACT		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.43(c)(8)		
Description:	FAILURE TO MAINTAIN PAINTED SURFACES ON WATER STORAGE FACILITIES		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.43(c)(4)		
Description:	FAILURE TO PROVIDE WATER LEVEL INDICATOR ON WATER STORAGE FACILITY		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.46(j)		
Description:	FAILURE TO CONDUCT CUSTOMER SERVICE INSPECTIONS ON NEW SERVICE CONNECTIONS		

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 ROTAN  
RN101428282**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2009-1176-PWS-E**

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

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Rotan ("the City") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a municipal public water supply at 302 West Sammy Baugh Avenue in Rotan, Fisher County, Texas (the "Facility") that has approximately 889 service connections and serves at least 25 people per day for at least 60 days per year.
2. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
3. The City received notice of the violations alleged in Section II ("Allegations") on or about June 24, 2009.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of Two Thousand Six Hundred Seventy-Seven Dollars (\$2,677) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The City has paid Two Thousand One Hundred Forty-Two Dollars (\$2,142) of the administrative penalty and Five Hundred Thirty-Five Dollars (\$535) is deferred contingent upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty.
6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

7. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
10. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the City is alleged to have:

1. Failed to compile a thorough and up-to-date plant operations manual for operator review and reference, in violation of 30 TEX. ADMIN. CODE § 290.42(l), as documented during an investigation conducted on April 27, 2009.
2. Failed to verify the accuracy of manual disinfectant residual analyzers at least once every 30 days using chlorine solutions of known concentrations, in violation of 30 TEX. ADMIN. CODE § 290.46(s)(2)(C)(i), as documented during an investigation conducted on April 27, 2009.
3. Failed to ensure that a backflow prevention assembly or an air gap is installed at any location where a potential contamination hazard exists, in violation of 30 TEX. ADMIN. CODE § 290.44(h)(1)(A), as documented during an investigation conducted on April 27, 2009.
4. Failed to provide two or more service pumps that have a total capacity of 2.0 gpm per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(D)(iii) and TEX. HEALTH & SAFETY CODE § 341.0315(c), as documented during an investigation conducted on April 27, 2009.
5. Failed to maintain an intruder-resistant fence around the north tower elevated storage tank, in violation of 30 TEX. ADMIN. CODE § 290.42(m), as documented during an investigation conducted on April 27, 2009.

## III. DENIALS

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

## IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Rotan, Docket No. 2009-1176-PWS-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the City shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Agreed Order:
    - i. Compile and begin maintaining a thorough and up-to-date plant operations manual for operator review and reference, in accordance with 30 TEX. ADMIN. CODE § 290.42;
    - ii. Begin verifying the accuracy of manual disinfectant residual analyzers at least once every 30 days using chlorine solutions of known concentrations, in accordance with 30 TEX. ADMIN. CODE § 290.46; and
    - iii. Repair the fence surrounding the north tower elevated storage tank to ensure that it is intruder-resistant, in accordance with 30 TEX. ADMIN. CODE § 290.42.
  - b. Within 60 days after the effective date of this Agreed Order:
    - i. Submit written certification as described in Ordering Provision No. 2.c below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a;
    - ii. Ensure a backflow prevention assembly or an air gap is installed at the funeral home and at the dental clinic, in accordance with 30 TEX. ADMIN. CODE § 290.44; and
    - iii. Provide two or more service pumps that have a total capacity of 2.0 gpm per connection, in accordance with 30 TEX. ADMIN. CODE § 290.45.
  - c. Within 75 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 Nos. 2.b.ii and iii. 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  
Abilene Regional Office  
Texas Commission on Environmental Quality  
1977 Industrial Boulevard  
Abilene, Texas 79602-7833

3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This 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 City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

John Brubaker  
For the Executive Director

10/3/2009  
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.

Jerry Marshall  
Signature

08/20/09  
Date

JERRY MARSHALL  
Name (Printed or typed)  
Authorized Representative of  
City of Rotan

Mayor  
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.