

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2009-0312-PWS-E TCEQ ID: RN101260115 CASE NO.: 37235
RESPONDENT NAME: CUSTOM WATER CO., L.L.C.

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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 HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATIONS OCCURRED: 146 Alamo Road, Montague County

TYPE OF OPERATION: Public water supply

SMALL BUSINESS: Yes No N/A

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired November 23, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Tracy Chandler, Litigation Division, MC 175, (512) 239-0629
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Mr. Tel Croston, Water Enforcement Section, MC 169, (512) 239-5717

TCEQ Regional Contact: Mr. Cliff Moore, Abilene Regional Office, MC R-3, (325) 698-6115

Respondent: Mr. Edward Fenoglio, President, Custom Water Co., L.L.C., 146 Alamo Road, Montague, Texas 76251

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: January 30, 2009</p> <p>Date of NOE Relating to this Case: February 13, 2009</p> <p>Background Facts: The EDPRP was filed on July 13, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on July 15, 2009. The EDFARP was filed on August 21, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDFARP on August 28, 2009. The Respondent failed to answer either the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>PWS:</p> <ol style="list-style-type: none"> Failed to notify the Executive Director prior to making any significant changes or addition to the Facility's production, treatment, storage, pressure maintenance or distribution facilities [30 TEX. ADMIN. CODE § 290.39(j)]. Failed to provide a well capacity of 0.6 gallons per minute ("gpm") per connection [30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(i) and TEX. HEALTH & SAFETY CODE § 341.0315(c)]. Failed to annually test backflow prevention assemblies by a recognized backflow prevention assembly tester and certified to be operating within specification [30 TEX. ADMIN. CODE § 290.44(h)(4)]. Failed to provide an up-to-date map of the distribution system so that valves and mains can be easily located during emergencies [30 TEX. ADMIN. CODE § 290.46(n)(2)]. 	<p>Total Assessed: \$1,590</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$1,590</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: N/A</p> <p>Person Compliance History Classification: N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days: <ol style="list-style-type: none"> Submit for approval, plans and specifications for the installation of additional storage tanks; and Have the backflow prevention assembly at the fire line tested by a recognized backflow assembly tester and certify that the assembly is operating within specifications, and implement procedures designed to ensure backflow prevention assemblies are tested annually and certified to be operating within specifications by a recognized backflow prevention assembly tester; and Provide an up-to-date map of the distribution system showing the location of all valves and mains. Within 180 days, provide a well capacity of not less than 0.6 gpm per connection. Within 195 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	17-Feb-2009	Screening	3-Mar-2009	EPA Due	
	PCW	3-Mar-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	Custom Water Co., L.L.C.
Reg. Ent. Ref. No.	RN101260115
Facility/Site Region	3-Abilene
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37235	No. of Violations	4
Docket No.	2009-0312-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Tel Croston
		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
 29.0% Enhancement

Notes: The Respondent was issued one Agreed Final Enforcement Order containing a denial of liability, one Notice of Violation (NOV) for a similar violation and two dissimilar NOV's in the past five years.

Culpability Subtotal 4
 No 0.0% Enhancement

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5

Economic Benefit Subtotal 6
 50.0% Enhancement*

Total EB Amounts	\$20,799
Approx. Cost of Compliance	\$255,225

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment
 11.0%

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement recommended for recovery of avoided costs of compliance for violation No. 3.

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Adjustment
 Reduction

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

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY

Screening Date 3-Mar-2009

Docket No. 2009-0312-PWS-E

PCW

Respondent Custom Water Co., L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 37235

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101260115

Media [Statute] Public Water Supply

Enf. Coordinator Tel Croston

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 29%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent was issued one Agreed Final Enforcement Order containing a denial of liability, one Notice of Violation (NOV) for a similar violation and two dissimilar NOVs in the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 29%

Screening Date 3-Mar-2009

Docket No. 2009-0312-PWS-E

PCW

Respondent Custom Water Co., L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 37235

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101260115

Media [Statute] Public Water Supply

Enf. Coordinator Tel Croston

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 290.39(j)

Violation Description

Failed to notify the Executive Director prior to making any significant changes or addition to the Facility's production, treatment, storage, pressure maintenance, or distribution facilities. Specifically, at the time of the record review it was documented that the Respondent failed to notify the Executive Director of the additional storage tanks added to the Facility's pump stations.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

Failure to comply with 100% of the rule requirement.

Adjustment \$900

\$100

Violation Events

Number of Violation Events 1

32 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$100

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/Settlement
	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 \$262

Violation Final Penalty Total \$199

This violation Final Assessed Penalty (adjusted for limits) \$199

Economic Benefit Worksheet

Respondent Custom Water Co., L.L.C.

Case ID No. 37235

Reg. Ent. Reference No. RN101260115

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
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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	\$5,000	30-Jan-2009	30-Oct-2009	0.75	\$12	\$249	\$262
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

Estimated cost to have an engineer prepare plans and specifications and obtain Commission approval for the construction of the tanks, calculated from the date of the record review to the projected 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

\$5,000

TOTAL

\$262

Screening Date 3-Mar-2009

Docket No. 2009-0312-PWS-E

PCW

Respondent Custom Water Co., L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 37235

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101260115

Media [Statute] Public Water Supply

Enf. Coordinator Tel Croston

Violation Number 2

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

Violation Description

Failed to provide a well capacity of 0.6 gallons per minute ("gpm") per connection. Specifically, at the time of the record review it was documented that the Facility is required to provide a minimum well capacity of 95 gpm. The Facility provides a well capacity of 40 gpm, which is a 58% deficiency.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Failing to provide sufficient well capacity could result in water outages and backflow problems which could expose customers to a significant amount of contaminants that would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 2 32 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$500

Two monthly events are recommended from the date of the record review, January 30, 2009, to the date of screening, March 3, 2009.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/ 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 \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$20,377

Violation Final Penalty Total \$994

This violation Final Assessed Penalty (adjusted for limits) \$994

Economic Benefit Worksheet

Respondent Custom Water Co., L.L.C.
Case ID No. 37235
Reg. Ent. Reference No. RN101260115
Media Public Water Supply
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$250,000	30-Jan-2009	31-Mar-2010	1.16	\$970	\$19,406	\$20,377
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

Estimated cost to drill a new well to increase capacity, calculated from the date of the record review to the projected 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

\$250,000

TOTAL

\$20,377

Screening Date 3-Mar-2009 Docket No. 2009-0312-PWS-E PCW

Respondent Custom Water Co., L.L.C. Policy Revision 2 (September 2002)
 Case ID No. 37235 PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101260115

Media [Statute] Public Water Supply

Enf. Coordinator Tel Croston

Violation Number 3

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

Violation Description
 Failed to annually test backflow prevention assemblies by a recognized backflow prevention assembly tester and certified to be operating within specifications. Specifically, at the time of the record review it was documented that the fireline backflow prevention device had not been tested in the past year.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					10%
Potential			X		

>> Programmatic Matrix

OR	Falsification	Harm			Percent
		Major	Moderate	Minor	
Actual					0%
Potential					

Matrix Notes
 Failure to test the backflow prevention device annually for malfunctions could expose customers of the Facility to significant amounts of contaminants which would not exceed levels protective of human health.

Adjustment \$900

\$100

Violation Events

Number of Violation Events 1 365 Number of violation days

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

Violation Base Penalty \$100

One annual event is recommended, calculated for the 12 months preceeding the record review date of January 30, 2009.

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 \$158 Violation Final Penalty Total \$199

This violation Final Assessed Penalty (adjusted for limits) \$199

Economic Benefit Worksheet

Respondent Custom Water Co., L.L.C.

Case ID No. 37235

Reg. Ent. Reference No. RN101260115

Media Public Water Supply

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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	\$150	30-Jan-2008	30-Jan-2009	1.00	\$8	\$150	\$158
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

Estimated cost to have a certified inspector or backflow assembly tester, inspect the fire line, calculated for the twelve months preceeding the record review date.

Approx. Cost of Compliance

\$150

TOTAL

\$158

Screening Date 3-Mar-2009

Docket No. 2009-0312-PWS-E

PCW

Respondent Custom Water Co., L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 37235

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101260115

Media [Statute] Public Water Supply

Enf. Coordinator Tel Croston

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 290.46(n)(2)

Violation Description

Failed to provide an up-to-date map of the distribution system so that valves and mains can easily be located during emergencies. Specifically, at the time of the record review it was documented that the system had no distribution map available.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

		Harm				
		Major	Moderate	Minor		
Release	Actual				Percent	0%
	Potential					

>> Programmatic Matrix

		Major	Moderate	Minor		
Falsification		x			Percent	10%

Matrix Notes

Failed to comply with 100% of the rule requirement.

Adjustment \$900

\$100

Violation Events

Number of Violation Events 1 Number of violation days 32

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$100

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/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 \$3

Violation Final Penalty Total \$199

This violation Final Assessed Penalty (adjusted for limits) \$199

Economic Benefit Worksheet

Respondent: Custom Water Co., L.L.C.

Case ID No. 37235

Reg. Ent. Reference No. RN101260115

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
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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)	\$75	30-Jan-2009	30-Oct-2009	0.75	\$3	n/a	\$3

Notes for DELAYED costs

Estimated cost to prepare a map of the distribution system, calculated from the date of the record review to the projected 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

\$75

TOTAL

\$3

Compliance History Report

Customer/Respondent/Owner-Operator:	CN602817876	Custom Water Co., L.L.C.	Classification:	Rating:
Regulated	RN101260115	MONTAGUE WATER SYSTEM	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY		REGISTRATION	1690004
Location:	146 ALAMO RD, MONTAGUE COUNTY, TX.			
TCEQ Region:	REGION 03 - ABILENE			
Date Compliance History Prepared:	February 25, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	February 25, 2004 to February 25, 2009			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Tel Croston	Phone:	239 - 5717	

Site Compliance History Components

- | | |
|--|-----------------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | Custom Water Co., LLC |
| 4. If Yes, who was/were the prior owner(s)? | Edward Fenoglio |
| 5. When did the change(s) in ownership occur? | 07/07/2005 |

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: 12/20/2008 | ADMINORDER 2008-0417-PWS-E |
| Classification: Major | |
| Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(2)
30 TAC Chapter 290, SubChapter D 290.46(f)(3) | |
| Description: Failed to develop and maintain records of water work operations and maintenance activities. | |
| Classification: Moderate | |
| Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(2)
30 TAC Chapter 290, SubChapter D 290.43(c)(8) | |
| Description: Failed to provide a ground storage tank that meets American Water Works Association ("AWWA") standards. | |
| Classification: Major | |
| Citation: 30 TAC Chapter 290, SubChapter F 290.110(e)(4) | |
| Description: Failed to submit disinfection level quarterly operating reports ("DLQORs") to the TCEQ by the tenth day of the month following the reporting period. | |
| Classification: Major | |
| Citation: 30 TAC Chapter 290, SubChapter D 290.43(e) | |
| Description: Failed to provide a properly constructed intruder-resistant fence around two ground storage tanks. | |
- 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.)
- | | |
|------------|----------|
| 02/23/2005 | (371798) |
| 08/22/2007 | (571212) |

10/03/2007	(595432)
05/02/2008	(641234)
12/19/2008	(708455)
02/13/2009	(725600)

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

1	Date:	02/24/2005 (371798)	CN602817876
	Self Report?	NO	Classification: Major
	Citation:	30 TAC Chapter 290, SubChapter D 290.46(f)(2) 30 TAC Chapter 290, SubChapter D 290.46(f)(3)	
	Description:	Failed to develop and maintain records of water work operations and maintenance activities.	
	Self Report?	NO	Classification: Moderate
	Citation:	30 TAC Chapter 290, SubChapter D 290.43(c)(2) 30 TAC Chapter 290, SubChapter D 290.43(c)(8)	
	Description:	Failed to provide a ground storage tank that meets American Water Works Association ("AWWA") standards.	
	Self Report?	NO	Classification: Moderate
	Citation:	30 TAC Chapter 290, SubChapter D 290.43(c)(2)	
	Description:	COMPLETE FAILURE TO PROVIDE 30" ACCESS OPENINGS TO ALL GROUND STORAGE TANKS.	
2	Self Report?	NO	Classification: Minor
	Citation:	30 TAC Chapter 290, SubChapter D 290.46(m)	
	Description:	FAILURE TO PAINT THE EXTERIOR SURFACES OF ALL GROUND STORAGE TANKS AND PRESSURE TANKS.	
	Self Report?	NO	Classification: Major
	Citation:	30 TAC Chapter 290, SubChapter F 290.110(e)(4)	
	Description:	Failed to submit disinfection level quarterly operating reports ("DLQORs") to the TCEQ by the tenth day of the month following the reporting period.	
	Self Report?	NO	Classification: Major
	Citation:	30 TAC Chapter 290, SubChapter D 290.43(e)	
	Description:	Failed to provide a properly constructed intruder-resistant fence around two ground storage tanks.	
	Date:	08/08/2007 (571212)	CN602817876
3	Self Report?	NO	Classification: Major
	Citation:	30 TAC Chapter 290, SubChapter D 290.46(f)(2) 30 TAC Chapter 290, SubChapter D 290.46(f)(3)	
	Description:	Failed to develop and maintain records of water work operations and maintenance activities.	
	Self Report?	NO	Classification: Moderate
	Citation:	30 TAC Chapter 290, SubChapter D 290.43(c)(2) 30 TAC Chapter 290, SubChapter D 290.43(c)(8)	
	Description:	Failed to provide a ground storage tank that meets American Water Works Association ("AWWA") standards.	
	Self Report?	NO	Classification: Moderate
	Citation:	30 TAC Chapter 290, SubChapter D 290.43(c)(2)	
	Description:	COMPLETE FAILURE TO PROVIDE 30" ACCESS OPENINGS TO ALL GROUND STORAGE TANKS.	
	Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.46(m)		
Description:	FAILURE TO PAINT THE EXTERIOR SURFACES OF ALL GROUND STORAGE TANKS AND PRESSURE TANKS.		
Self Report?	NO	Classification: Major	
Citation:	30 TAC Chapter 290, SubChapter F 290.110(e)(4)		
Description:	Failed to submit disinfection level quarterly operating reports ("DLQORs") to the TCEQ by the tenth day of the month following the reporting period.		
Self Report?	NO	Classification: Major	
Citation:	30 TAC Chapter 290, SubChapter D 290.43(e)		
Description:	Failed to provide a properly constructed intruder-resistant fence around two ground storage tanks.		
Date:	05/02/2008 (641234)	CN602817876	

Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter D 290.39(j)		
Description:	Failure to notify the TCEQ prior to making significant changes in storage facilities.		
Self Report?	NO	Classification:	Moderate
	30 TAC Chapter 290, SubChapter D 290.45(b)(1)(C)(i)		
	Failure to provide well capacity of at least 0.6 GPM per connection.		
	No	Classification:	Moderate
	30 TAC Chapter 290, SubChapter D 290.44(h)(4)		
	Failure to test the backflow prevention device on the fire line annually.		
	No	Classification:	Minor
	30 TAC Chapter 290, SubChapter D 290.46(n)(2)		
	Failure to provide an accurate and up-to-date distribution map.		
	No	Classification:	Moderate
	30 TAC Chapter 290, SubChapter D 290.46(m)(1)		
	Failure to provide annual tank inspection forms.		
	No	Classification:	Minor
	30 TAC Chapter 290, SubChapter D 290.42(l)		
	Failure to provide a plant operations manual.		
	No	Classification:	Moderate
	30 TAC Chapter 290, SubChapter D 290.46(r)		
	Failure to maintain a pressure of 35 psi in distribution system.		

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
CUSTOM WATER CO., L.L.C.;
RN101260115**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2009-0312-PWS-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Custom Water Co., L.L.C. ("Custom Water").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Custom Water owns and operates a public water supply located at 146 Alamo Road, Montague County, Texas (the "Facility").
2. The Facility has 159 service connections and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water supply system as defined in 30 TEX. ADMIN. CODE § 290.38(63).
3. During an investigation conducted on January 30, 2009, a TCEQ Abilene Regional Office investigator documented that Custom Water:
 - a. Failed to notify the Executive Director prior to making any significant changes or addition to the Facility's production, treatment, storage, pressure maintenance or distribution facilities. Specifically, Custom Water failed to notify the Executive Director of the additional storage tanks added to the Facility's pump stations.
 - b. Failed to provide a well capacity of 0.6 gallons per minute ("gpm") per connection. Specifically, the Facility is required to provide a minimum well capacity of 95 gpm, yet the Facility provided a well capacity of 40 gpm, a 58% deficiency.

- c. Failed to annually test backflow prevention assemblies by a recognized backflow prevention assembly tester and certified to be operating within specifications. Specifically, the fire line backflow prevention device had not been tested in the past year.
 - d. Failed to provide an up-to-date map of the distribution system so that valves and mains can be easily located during emergencies. Specifically, the system had no distribution map available.
-
4. Custom Water received notice of the violations on or about February 18, 2009.
 5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Custom Water Co., L.L.C." (the "EDPRP") in the TCEQ Chief Clerk's office on July 13, 2009.
 6. By letter dated July 13, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Custom Water with notice of the EDPRP. According to the return receipt "green card," Custom Water received notice of the EDPRP on July 15, 2009, as evidenced by the signature on the card.
 7. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Custom Water Co., L.L.C." (the "EDFARP") in the TCEQ Chief Clerk's office on August 21, 2009.
 8. By letter dated August 21, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Custom Water with notice of the EDFARP. According to the return receipt "green card," Custom Water received notice of the EDFARP on August 28, 2009, as evidenced by the signature on the card.
 9. More than 20 days have elapsed since Custom Water received notice of the EDPRP and the EDFARP, provided by the Executive Director. Custom Water failed to file an answer to either the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Custom Water is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Custom Water failed to notify the Executive Director prior to making any significant changes or addition to the Facility's production, treatment, storage, pressure maintenance or distribution facilities, in violation of 30 TEX. ADMIN. CODE § 290.39(j).
3. As evidenced by Finding of Fact No. 3.b., Custom Water failed to provide a well capacity of 0.6 gpm per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(i) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
4. As evidenced by Finding of Fact No. 3.c., Custom Water failed to annually test backflow prevention assemblies by a recognized backflow prevention assembly tester and certified to be operating within specifications, in violation of 30 TEX. ADMIN. CODE § 290.44(h)(4).
5. As evidenced by Finding of Fact No. 3.d., Custom Water failed to provide an up-to-date map of the distribution system so that valves and mains can be easily located during emergencies, in violation of 30 TEX. ADMIN. CODE § 290.46(n)(2).
6. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Custom Water with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).
7. As evidenced by Finding of Fact Nos. 7 and 8, the Executive Director timely served Custom Water with proper notice of the EDFARP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).
8. As evidenced by Finding of Fact No. 9, Custom Water failed to file a timely answer to the EDPRP and the EDFARP as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Custom Water and assess the penalty recommended by the Executive Director.
9. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Custom Water for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for

violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

10. An administrative penalty in the amount of one thousand five hundred ninety dollars (\$1,590.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b).
11. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Custom Water is assessed an administrative penalty in the amount of one thousand five hundred ninety dollars (\$1,590.00) for violations of the Texas Health & Safety Code, and the rules of the TCEQ. The payment of this administrative penalty and Custom Water's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Custom Water Co., L.L.C.; Docket No. 2009-0312-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. Custom Water shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Custom Water shall:
 - i. Submit for approval, plans and specifications for the installation of additional storage tanks in accordance with 30 TEX. ADMIN. CODE § 290.45. The plans and specifications shall be submitted to:

Technical Review and Oversight Team
Water Supply Division
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- ii. Have the backflow prevention assembly at the fire line tested by a recognized backflow assembly tester and certify that the assembly is operating within specifications, and implement procedures designed to ensure backflow prevention assemblies are tested annually and certified to be operating within specifications by a recognized backflow prevention assembly tester, as required by 30 TEX. ADMIN. CODE § 290.44; and
 - iii. Provide an up-to-date map of the distribution system showing the location of all valves and mains, as required by 30 TEX. ADMIN. CODE § 290.46(n).
- b. Within 180 days after the effective date of this Order, Custom Water shall provide a well capacity of not less than 0.6 gpm per connection, in accordance with 30 TEX. ADMIN. CODE § 290.45.
- c. Within 195 days after the effective date of this Order, Custom Water shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a.i., 2.a.ii., 2.a.iii. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Custom Water shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a.i., 2.a.ii., 2.a.iii. and 2.b. 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:

Cliff Moore, Water Section Manager
Texas Commission on Environmental Quality
Abilene Regional Office
1977 Industrial Boulevard
Abilene, Texas 79602-7833

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Custom Water. Custom Water is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Custom Water shall be made in writing to the Executive Director. Extensions are not effective until Custom Water receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Custom Water if the Executive Director determines that Custom Water has not complied with one or more of the terms or conditions in this Order.
7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Custom Water Co., L.L.C.
Docket No. 2009-0312-PWS-E
Page 7

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF TRACY CHANDLER

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Tracy Chandler. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Custom Water Co., L.L.C.” (the “EDPRP”) was filed with the Office of the Chief Clerk on July 13, 2009.

The EDPRP was mailed to Custom Water at its last known address on July 13, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Custom Water received notice of the EDPRP on July 15, 2009, as evidenced by the signature on the card.

More than 20 days have elapsed since Custom Water received notice of the EDPRP. Custom Water failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Custom Water Co., L.L.C.” (the “EDFARP”) was filed with the Office of the Chief Clerk on August 21, 2009.

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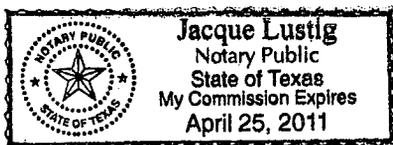
More than 20 days have elapsed since Custom Water received notice of the EDFARP. Custom Water failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.”



Tracy Chandler, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Tracy Chandler, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 7th day of October, A.D., 2009.





Notary Signature