

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2008-1644-PWS-E **TCEQ ID:** RN101383982 **CASE NO.:** 34524  
**RESPONDENT NAME:** City of Hale Center

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> City of Hale Center, 702 Main Street, Hale Center, Hale County</p> <p><b>TYPE OF OPERATION:</b> 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 February 2, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  TCEQ Attorney/SEP Coordinator: None  TCEQ Enforcement Coordinator: Ms. Andrea Linson-Mgbeoduru, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-1482; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387  Respondent: The Honorable Eugene Carter, Mayor, City of Hale Center, P.O. Box 532, Hale Center, Texas 79041  Respondent's Attorney: Mr. Micah Milouf, of the law firm of Owen, Voss, Owen, &amp; Melton, P.C., 700 West Seventh Street, Plainview, Texas 79073-0328</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" 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> September 3, 2008</p> <p><b>Date of NOV/NOE Relating to this Case:</b> September 25, 2008 (NOE)</p> <p><b>Background Facts:</b> This was a record review.</p> <p><b>WATER</b></p> <p>1) Failure to provide a pressure indicator on the Facility's elevated storage tank [30 TEX. ADMIN. CODE § 290.43(c)(4) and TCEQ Agreed Order Docket No. 2007-1402-PWS-E, Ordering Provision No. 3.b.ii.].</p> <p>2) Failure to provide Facility records to Commission personnel at the time of the investigation [30 TEX. ADMIN. CODE § 290.46(f)(2) and TCEQ Agreed Order Docket No. 2007-1402-PWS-E, Ordering Provision No. 3.a.i.].</p>	<p><b>Total Assessed:</b> \$336</p> <p><b>Total Deferred:</b> \$0  <input 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> \$336</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>Findings Orders Justification:</b> Indifference to legal duty because the Respondent failed to comply with a prior Agreed Order.</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that as of October 29, 2008, the Respondent has implemented the following corrective measures:</p> <p>a. Provided a pressure indicator located at ground level on the Facility's elevated storage tank; and</p> <p>b. Began maintaining water system records, including, but not limited to customer service inspections, Disinfectant Level Quarterly Operating Reports, and the results of backflow prevention device testing and made these documents available for Commission review.</p>

Additional ID No(s): PWS ID No. 0950002



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

<b>DATES</b>	<b>Assigned</b>	28-Sep-2008	<b>Screening</b>	14-Oct-2008	<b>EPA Due</b>	30-May-2009
	<b>PCW</b>	14-Oct-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	City of Hale Center
<b>Reg. Ent. Ref. No.</b>	RN101383982
<b>Facility/Site Region</b>	2-Lubbock
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	34524	<b>No. of Violations</b>	2
<b>Docket No.</b>	2008-1644-PWS-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Andrea Linson-Mgbeoduru
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$300
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	22.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$66
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**Notes**  
Enhancement due to one prior Notice of Violation with dissimilar violations as those in the current enforcement action, and one agreed final enforcement order containing a denial of liability.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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**Notes**  
The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$30
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts \$10  
Approx. Cost of Compliance \$300  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$336
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount** \$336

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$336
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

**Notes**

No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	\$336
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**Screening Date** 14-Oct-2008

**Docket No.** 2008-1644-PWS-E

**PCW**

**Respondent** City of Hale Center

Policy Revision 2 (September 2002)

**Case ID No.** 34524

PCW Revision June 12, 2008

**Reg. Ent. Reference No.** RN101383982

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Andrea Linson-Mgbeoduru

**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)	0	0%
	Other written NOVs	1	2%
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 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)** 22%

>> **Repeat Violator (Subtotal 3)**

N/A

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement due to one prior Notice of Violation with dissimilar violations as those in the current enforcement action, and one agreed final enforcement order containing a denial of liability.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 22%

<b>Screening Date</b> 14-Oct-2008		<b>Docket No.</b> 2008-1644-PWS-E		<b>PCW</b>
<b>Respondent</b> City of Hale Center				<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 34524				<i>PCW Revision June 12, 2008</i>
<b>Reg. Ent. Reference No.</b> RN101383982				
<b>Media [Statute]</b> Public Water Supply				
<b>Enf. Coordinator</b> Andrea Linson-Mgbeoduru				
<b>Violation Number</b>		<input type="text" value="1"/>		
<b>Rule Cite(s)</b>		30 Tex. Admin. Code § 290.43(c)(4) and TCEQ Agreed Order Docket No. 2007-1402-PWS-E, Ordering Provision No. 3.b.ii		
<b>Violation Description</b>		Failed to provide a pressure indicator located at ground level on the Facility's elevated storage tank. Specifically, at the time of the record review, it was documented that the Respondent did not have a pressure indicator located at ground level that is required for the elevated storage tank since the tank is equipped with a float with a moving target indicator.		
<b>Base Penalty</b>				<input type="text" value="\$1,000"/>
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
<b>OR</b>	<b>Harm</b>			
	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
<b>Release</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<b>Actual</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<b>Potential</b>	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	
				<b>Percent</b> <input type="text" value="10%"/>
<b>&gt;&gt; Programmatic Matrix</b>				
<b>Falsification</b>				
<b>Major</b>				<b>Moderate</b>
<b>Minor</b>				
<input type="text"/>				<input type="text"/>
<input type="text"/>				<input type="text"/>
				<b>Percent</b> <input type="text" value="0%"/>
<b>Matrix Notes</b>	Failure to equip the elevated storage tank with a liquid level indicator can contribute to inadequate water supply because the operator cannot make the necessary production and usage calculations to ensure that customers are not exposed to a significant amount of contamination that would not exceed levels protective of human health.			
<b>Adjustment</b>				<input type="text" value="\$900"/>
				<input type="text" value="\$100"/>
<b>Violation Events</b>				
<b>Number of Violation Events</b>		<input type="text" value="2"/>	<b>Number of violation days</b>	
		<input type="text" value="169"/>		
<i>mark only one with an x</i>	<b>daily</b>	<input type="text"/>		
	<b>monthly</b>	<input type="text"/>		
	<b>quarterly</b>	<input checked="" type="checkbox"/>		
	<b>semiannual</b>	<input type="text"/>		
	<b>annual</b>	<input type="text"/>		
	<b>single event</b>	<input type="text"/>		
				<b>Violation Base Penalty</b> <input type="text" value="\$200"/>
Two quarterly events are recommended, calculated from the effective date of TCEQ Agreed Order Docket No. 2007-1402-PWS-E, April 28, 2008, to the screening date October 14, 2008.				
<b>Good Faith Efforts to Comply</b>		<b>10.0% Reduction</b>		<input type="text" value="\$20"/>
		<b>Before NOV</b>	<b>NOV to EDRP/Settlement Offer</b>	
<b>Extraordinary</b>	<input type="text"/>	<input type="text"/>		
<b>Ordinary</b>	<input type="text"/>	<input checked="" type="checkbox"/>		
<b>N/A</b>	<input type="text"/>	<i>(mark with x)</i>		
<b>Notes</b>	The Respondent achieved compliance October 29, 2008.			
<b>Violation Subtotal</b>				<input type="text" value="\$180"/>
<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>		
<b>Estimated EB Amount</b>		<input type="text" value="\$7"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$224"/>	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>				<input type="text" value="\$224"/>

### Economic Benefit Worksheet

**Respondent:** City of Hale Center  
**Case ID No.:** 34524  
**Reg. Ent. Reference No.:** RN101383982  
**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**

Equipment	\$200	28-Apr-2008	29-Oct-2008	0.50	\$0	\$7	\$7
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 amount to install an appropriate liquid level indicator on the elevated storage tank. The date required is the effective date of TCEQ Agreed Order Docket Number 2007-1402-PWS-E. The final date is the 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**

\$7

<b>Screening Date</b> 14-Oct-2008	<b>Docket No.</b> 2008-1644-PWS-E	<b>PCW</b>				
<b>Respondent</b> City of Hale Center	<i>Policy Revision 2 (September 2002)</i>					
<b>Case ID No.</b> 34524	<i>PCW Revision June 12, 2008</i>					
<b>Reg. Ent. Reference No.</b> RN101383982						
<b>Media [Statute]</b> Public Water Supply						
<b>Enf. Coordinator</b> Andrea Linson-Mgbeoduru						
<b>Violation Number</b> <input type="text" value="2"/>						
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 290.46(f)(2) and TCEQ Agreed Order Docket No. 2007-1402-PWS-E, Ordering Provision No. 3.a.i					
<b>Violation Description</b>	Failed to provide Facility records to Commission personnel at the time of the investigation, including customer service inspection reports, Disinfectant Level Quarterly Operating Reports ("DLQORs"), and the records of backflow prevention device testing.					
<b>Base Penalty</b>		<input type="text" value="\$1,000"/>				
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>						
OR	<b>Harm</b>					
	Release	Major	Moderate		Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		
<b>&gt;&gt; Programmatic Matrix</b>						
			<b>Falsification</b>			
			Major	Moderate	Minor	
			<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>
			<input type="text"/>	<input type="text"/>	<input type="text"/>	
<b>Matrix Notes</b>	The Respondent failed to comply with 100% of the rule requirement.					
<b>Adjustment</b>					<input type="text" value="\$900"/>	
					<input type="text" value="\$100"/>	
<b>Violation Events</b>						
<b>Number of Violation Events</b>		<input type="text" value="1"/>		<b>Number of violation days</b>		
		<input type="text" value="169"/>				
<i>mark only one with an x</i>	daily	<input type="text"/>				
	monthly	<input type="text"/>				
	quarterly	<input type="text"/>				
	semiannual	<input type="text"/>				
	annual	<input type="text"/>				
	single event	<input type="text" value="x"/>				
<b>Violation Base Penalty</b>					<input type="text" value="\$100"/>	
One single event is recommended.						
<b>Good Faith Efforts to Comply</b>			<b>10.0% Reduction</b>		<input type="text" value="\$10"/>	
			Before NOV	NOV to EDPRP/Settlement Offer		
Extraordinary			<input type="text"/>	<input type="text"/>		
Ordinary			<input type="text"/>	<input type="text" value="x"/>		
N/A			(mark with x)			
<b>Notes</b>			The Respondent achieved compliance October 29, 2008.			
<b>Violation Subtotal</b>					<input type="text" value="\$90"/>	
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>			
<b>Estimated EB Amount</b>			<input type="text" value="\$3"/>		<b>Violation Final Penalty Total</b>	
					<input type="text" value="\$112"/>	
<b>This violation Final Assessed Penalty (adjusted for limits)</b>					<input type="text" value="\$112"/>	

### Economic Benefit Worksheet

**Respondent** City of Hale Center  
**Case ID No.** 34524  
**Reg. Ent. Reference No.** RN101383982  
**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
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	\$100	28-Apr-2008	29-Oct-2008	0.50	\$3	n/a	\$3
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 amount to organize and begin maintaining a record keeping system for the customer service inspection reports, the DLQORs and the backflow prevention device testing. The date required is the effective date of TCEQ Agreed Order Docket Number 2007-1402-PWS-E. The final date is the 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**

\$3





Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(5)(B)

Description: Failure to keep daily disinfectant residual records.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)

Description: Failure to complete and implement a Monitoring Plan.

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.)

N/A	1	11/23/2005	(435729)
	2	03/13/2006	(458992)
	3	07/31/2006	(489492)
	4	07/31/2007	(568356)
	5	08/15/2008	(686982)
	6	09/25/2008	(701581)

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

Date: 11/28/2005 (435729)

CN600636609

N/A

Self NO Classification Moderate

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

30 TAC Chapter 290, SubChapter D 290.44(h)(1)(B)(ii)

30 TAC Chapter 290, SubChapter D 290.44(h)(1)(B)(iii)

30 TAC Chapter 290, SubChapter D 290.44(h)(4)(C)

Description: Failure to install and maintain proper backflow assemblies.

Self NO Classification Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)

Description: Failure to record sanitary control easements around all wells.

Self NO Classification Moderate

Citation: 30 TAC Chapter 288, SubChapter B 288.20

Description: Failure to prepare a Drought Contingency Plan.

Self NO Classification Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.121

Description: Failure to prepare a Monitoring Plan.

Self NO Classification Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(1)

Description: Failure to properly vent the ground storage (GS) tank near City Hall.

Self NO Classification Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.44(h)(3)

Description: Failure to provide an air gap between the filling outlet hose and the receiving tank at the overhead bulk water dispensing station near City Hall.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF HALE CENTER  
RN101383982

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER  
DOCKET NO. 2008-1644-PWS-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality (“the Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding the City of Hale Center (“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, represented by Micah Milouf of the law firm of Owen, Voss, Owen, & Melton, P.C., presented this agreement to the Commission.

The City understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the City agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the City.

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

**I. FINDINGS OF FACT**

1. The City owns and operates a public water supply at 702 Main Street in Hale Center, Hale County, Texas (the “Facility”) that has approximately 814 service connections and serves at least 25 people per day for at least 60 days per year.



2. During a record review on September 3, 2008, TCEQ staff documented that the City did not have a pressure indicator located at ground level on the Facility's elevated storage tank. Specifically, at the time of the record review it was documented that the City did not have a pressure indicator located at ground level that is required for the elevated storage tank since the tank is equipped with a float with a moving target indicator.
3. During a record review on September 3, 2008, TCEQ staff documented that the City did not provide water system records to Commission personnel at the time of the investigation, including customer service inspection reports, Disinfectant Level Quarterly Operating Reports ("DLQORs"), and the records of backflow prevention device testing.
4. The City received notice of the violations on September 30, 2008.
5. The Executive Director recognizes that as of October 29, 2008, the City has implemented the following corrective measures:
  - a. Provided a pressure indicator located at ground level on the Facility's elevated storage tank; and
  - b. Began maintaining water system records, including, but not limited to customer service inspections, DLQORs, and the results of backflow prevention device testing and made these documents available for Commission review.

## II. CONCLUSIONS OF LAW

1. The City 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 Findings of Fact No. 2, the City failed to provide a pressure indicator on the Facility's elevated storage tank, in violation of 30 TEX. ADMIN. CODE § 290.43(c)(4) and TCEQ Agreed Order Docket No. 2007-1402-PWS-E, Ordering Provision No. 3.b.ii.
3. As evidenced by Findings of Fact No. 3, the City failed to provide Facility records to Commission personnel at the time of the investigation, in violation of 30 TEX. ADMIN. CODE § 290.46(f)(2) and TCEQ Agreed Order Docket No. 2007-1402-PWS-E, Ordering Provision No. 3.a.i.
4. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the City 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.
5. An administrative penalty in the amount of Three Hundred Thirty-Six Dollars (\$336) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX.



HEALTH & SAFETY CODE § 341.049(b). The City has paid the Three Hundred Thirty-Six Dollar (\$336) administrative penalty.

### III. ORDERING PROVISIONS

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

1. The City is assessed an administrative penalty in the amount of Three Hundred Thirty-Six Dollars (\$336) as set forth in Section II, Paragraph 5 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Hale Center, Docket No. 2008-1644-PWS-E" to:  

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The 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.
3. 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 the City if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
4. 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.
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 agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.





7. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.



## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

John Zolner  
For the Executive Director

\_\_\_\_\_  
Date 1/23/2009

I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Hale Center. I am authorized to agree to the attached Agreed Order on behalf of the City of Hale Center, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, the City of Hale Center waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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.

Eugene Carter  
Signature

December 1, 2008  
Date

Eugene Carter  
Name (Printed or typed)  
Authorized Representative of  
City of Hale Center

Mayor  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.

