# EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.:** 2009-0063-PWS-E **TCEQ ID:** RN104394366 **CASE NO.:** 37015

**RESPONDENT NAME:** IH 10/FIS Building, L.P.

| ORDER TYPE: | | |
|---|---|---|
| X 1660 AGREED ORDER | __FINDINGS AGREED ORDER | __FINDINGS ORDER FOLLOWING SOAH HEARING |
| __FINDINGS DEFAULT ORDER | __SHUTDOWN ORDER | __IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| __AMENDED ORDER | __EMERGENCY ORDER | |
| CASE TYPE: | | |
| __AIR | __MULTI-MEDIA (check all that apply) | __INDUSTRIAL AND HAZARDOUS WASTE |
| X PUBLIC WATER SUPPLY | __PETROLEUM STORAGE TANKS | __OCCUPATIONAL CERTIFICATION |
| __WATER QUALITY | __SEWAGE SLUDGE | __UNDERGROUND INJECTION CONTROL |
| __MUNICIPAL SOLID WASTE | __RADIOACTIVE WASTE | __DRY CLEANER REGISTRATION |

**SITE WHERE VIOLATION(S) OCCURRED:** FIS Building LP, 28025 Interstate Highway 10 West, Bexar County

**TYPE OF OPERATION:** Public water supply

**SMALL BUSINESS:** __X__ **Yes** ____ **No**

**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 has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on April 27, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney/SEP Coordinator:** None
**TCEQ Enforcement Coordinator:** Ms. Yuliya Dunaway, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4077; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387
**Respondent:** Mr. Robert Goldberg, Registered Agent, IH 10/FIS Building, L.P., 13035 Hunter's Ledge, San Antonio, Texas 78230
Mr. John T. Joseph, SVP Business Administration, IH 10/FIS Building, L.P., 13035 Hunter's Ledge, San Antonio, Texas 78230
**Respondent's Attorney:** Not represented by counsel on this enforcement matter

## VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|---|---|---|
| **Type of Investigation:**<br>__ Complaint<br>__ Routine<br>__ Enforcement Follow-up<br>X Records Review<br><br>**Date(s) of Complaints Relating to this Case:** None<br><br>**Date of Investigation Relating to this Case:** September 1, 2008<br><br>**Date of NOV/NOE Relating to this Case:** December 19, 2008 (NOE)<br><br>**Background Facts:** This was a record review.<br><br>**WATER**<br><br>1) Failure to collect routine coliform samples for the months of October 2007 through April 2008 and failure to provide public notification of the failure to sample for the months of October 2007 through April 2008 [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.033(d)].<br><br>2) Failure to collect a set of repeat coliform samples within 24 hours of being notified of a total coliform-positive sample result found in September 2008 [30 TEX. ADMIN. CODE § 290.109(c)(3)(A)(ii)]. | **Total Assessed:** $2,665<br><br>**Total Deferred:** $533<br>X Expedited Settlement<br><br>__Financial Inability to Pay<br><br>**SEP Conditional Offset:** $0<br><br>**Total Paid to General Revenue:** $2,132<br><br>**Site Compliance History Classification**<br>__ **High** __ **Average** __ **Poor**<br><br>**Person Compliance History Classification**<br>__ **High** __ **Average** __ **Poor**<br><br>**Major Source:** __ Yes X No<br><br>**Applicable Penalty Policy:** September 2002 | **Corrective Actions Taken:**<br><br>The Executive Director recognizes that the Respondent began collecting water samples in accordance with the coliform monitoring requirements as of October 2008. |

Additional ID No(s).: PWS ID No. 0150548

# Penalty Calculation Worksheet (PCW)

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

TCEQ

| DATES | | | | | |
|---|---|---|---|---|---|
| Assigned | 5-Jan-2009 | | | | |
| PCW | 12-Jan-2009 | Screening | 14-Jan-2009 | EPA Due | 1-Aug-2009 |

**RESPONDENT/FACILITY INFORMATION**

| | | | |
|---|---|---|---|
| Respondent | IH 10/FIS Building, L.P. | | |
| Reg. Ent. Ref. No. | RN104394366 | | |
| Facility/Site Region | 13-San Antonio | Major/Minor Source | Minor |

**CASE INFORMATION**

| | | | |
|---|---|---|---|
| Enf./Case ID No. | 37015 | No. of Violations | 2 |
| Docket No. | 2009-0063-PWS-E | Order Type | 1660 |
| Media Program(s) | Public Water Supply | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Yuliya Dunaway |
| | | EC's Team | Enforcement Team 2 |

Admin. Penalty $ Limit Minimum $50 Maximum $1,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** — *Subtotal 1* $2,000

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

**Compliance History** — 12.0% Enhancement — *Subtotals 2, 3, & 7* $240

Notes: The penalty enhancement is due to two prior NOVs for the same or similar violations as those in the current enforcement action and one dissimilar NOV.

**Culpability** — No — 0.0% Enhancement — *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** — *Subtotal 5* $0

**Economic Benefit** — 0.0% Enhancement* — *Subtotal 6* $0

| | |
|---|---|
| Total EB Amounts | $425 |
| Approx. Cost of Compliance | $400 |

**Capped at the Total EB $ Amount*

**SUM OF SUBTOTALS 1-7** — *Final Subtotal* $2,240

**OTHER FACTORS AS JUSTICE MAY REQUIRE** — 19.0% — *Adjustment* $425

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement recommended for recovery of avoided costs of compliance.

*Final Penalty Amount* $2,665

**STATUTORY LIMIT ADJUSTMENT** — *Final Assessed Penalty* $2,665

**DEFERRAL** — 20.0% Reduction — *Adjustment* -$533

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

Notes: Deferral offered for expedited settlement.

**PAYABLE PENALTY** $2,132

**Screening Date** 14-Jan-2009 **Docket No.** 2009-0063-PWS-E **PCW**

**Respondent** IH 10/FIS Building, L.P. *Policy Revision 2 (September 2002)*

**Case ID No.** 37015 *PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN104394366

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Yuliya Dunaway

## Compliance History Worksheet

>> **Compliance History *Site* Enhancement (Subtotal 2)**

| Component | Number of... | *Enter Number Here* | Adjust. |
|---|---|---|---|
| NOVs | Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*) | 2 | 10% |
| | Other written NOVs | 1 | 2% |
| Orders | Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of 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% |

| | | *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)*** 12%

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

N/A ***Adjustment Percentage (Subtotal 3)*** 0%

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

N/A ***Adjustment Percentage (Subtotal 7)*** 0%

>> **Compliance History Summary**

**Compliance History Notes**: The penalty enhancement is due to two prior NOVs for the same or similar violations as those in the current enforcement action and one dissimilar NOV.

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

**Screening Date** 14-Jan-2009 **Docket No.** 2009-0063-PWS-E **PCW**

**Respondent** IH 10/FIS Building, L.P.

*Policy Revision 2 (September 2002)*

**Case ID No.** 37015

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN104394366

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Yuliya Dunaway

**Violation Number** 2

**Rule Cite(s)** 30 Tex. Admin. Code § 290.109(c)(3)(A)(ii)

**Violation Description** Failed to collect a set of repeat coliform samples within 24 hours of being notified of a total coliform-positive sample result found in September 2008. Specifically, it was documented that only two of the four required repeat samples were collected following notification of a total coliform-positive sample found for the month of September 2008.

**Base Penalty** $1,000

## >> Environmental, Property and Human Health Matrix

OR

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | |
| Potential | x | | |

**Percent** 25%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | | | |

**Percent** 0%

Matrix Notes: Failure to collect all repeat bacteriological samples could result in the public being exposed to significant amounts of bacteriological contamination which would exceed levels that are protective of human health.

**Adjustment** $750

$250

## Violation Events

Number of Violation Events 1 — 30 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| weekly | |
| monthly | x |
| quarterly | |
| semiannual | |
| annual | |
| single event | |

**Violation Base Penalty** $250

One monthly 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** $250

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $50

## Statutory Limit Test

**Violation Final Penalty Total** $333

**This violation Final Assessed Penalty (adjusted for limits)** $333

# Economic Benefit Worksheet

**Respondent** IH 10/FIS Building, L.P.
**Case ID No.** 37015
**Reg. Ent. Reference No.** RN104394366
**Media** Public Water Supply
**Violation No.** 2

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description (No commas or $) | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|---|---|---|---|---|---|---|---|
| **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] | $50 | 1-Sep-2008 | 30-Sep-2008 | 0.00 | $0 | $50 | $50 |
| Other (as needed) | | | | 0.00 | $0 | $0 | $0 |
| Notes for AVOIDED costs | The avoided costs include the amount to collect all additional required repeat samples ($25 for each sample, two out of four samples were not collected), calculated for the month when the violation occurred. | | | | | | |

Approx. Cost of Compliance: $50

TOTAL: $50

**Screening Date** 14-Jan-2009 **Docket No.** 2009-0063-PWS-E **PCW**

**Respondent** IH 10/FIS Building, L.P.

*Policy Revision 2 (September 2002)*

**Case ID No.** 37015

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN104394366

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Yuliya Dunaway

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B), and Tex. Health & Safety Code § 341.033(d)

**Violation Description** Failed to collect routine coliform samples for the months of October 2007 through April 2008 and failed to provide public notification of the failure to sample for the months of October 2007 through April 2008.

**Base Penalty** $1,000

## >> Environmental, Property and Human Health Matrix

OR

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | |
| Potential | x | | |

**Percent** 25%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | | | |

**Percent** 0%

Matrix Notes: Failure to collect routine bacteriological samples of the public water supply and failure to provide public notification could result in the public being exposed to significant amounts of bacteriological contamination which would exceed levels that are protective of human health.

**Adjustment** $750

$250

## Violation Events

Number of Violation Events 7 | 212 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| weekly | |
| monthly | x |
| quarterly | |
| semiannual | |
| annual | |
| single event | |

**Violation Base Penalty** $1,750

Seven monthly events are 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** $1,750

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $375

## Statutory Limit Test

**Violation Final Penalty Total** $2,332

**This violation Final Assessed Penalty (adjusted for limits)** $2,332

# Economic Benefit Worksheet

**Respondent** IH 10/FIS Building, L.P.
**Case ID No.** 37015
**Reg. Ent. Reference No.** RN104394366
**Media** Public Water Supply
**Violation No.** 1

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description | Item Cost (No commas or $) | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|---|---|---|---|---|---|---|---|
| **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] | $350 | 1-Oct-2007 | 1-Apr-2008 | 1.42 | $25 | $350 | $375 |
| Other (as needed) | | | | 0.00 | $0 | $0 | $0 |
| Notes for AVOIDED costs | The avoided costs include the amount to collect monthly coliform samples and provide public notification ($25 for seven monthly coliform samples and $25 per month to provide public notice for seven months), calculated for the months when violations occurred. | | | | | | |

Approx. Cost of Compliance: $350

TOTAL: $375

# Compliance History Report

| | | | | |
|---|---|---|---|---|
| Customer/Respondent/Owner-Operator: | CN602700494 | IH 10/FIS Building, L.P. | Classification: | Rating: |
| Regulated Entity: | RN104394366 | FIS BUILDING LP | Classification: | Site Rating: |
| ID Number(s): | PUBLIC WATER SYSTEM/SUPPLY | REGISTRATION | 0150548 | |
| Location: | 28025 IH 10 WEST, BEXAR COUNTY, TX | | | |
| TCEQ Region: | REGION 13 - SAN ANTONIO | | | |
| Date Compliance History Prepared: | January 13, 2009 | | | |
| Agency Decision Requiring Compliance History: | Enforcement | | | |
| Compliance Period: | January 13, 2004 to January 13, 2009 | | | |

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

Name: Yuliya Dunaway Phone: 210-403-4077

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A
6.

### Components (Multimedia) for the Site :

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

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

| | | |
|---|---|---|
| 1 | 08/22/2008 | (700063) |
| 2 | 12/16/2008 | (710290) |
| 3 | 12/19/2008 | (721544) |
| 4 | 12/19/2008 | (721548) |
| 5 | 12/19/2008 | (721551) |
| 6 | 12/19/2008 | (721552) |
| 7 | 12/19/2008 | (721554) |
| 8 | 12/19/2008 | (721557) |
| 9 | 12/19/2008 | (721561) |
| 10 | 12/22/2008 | (721938) |

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

Date: 03/11/2008 (721551) CN602700494

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)

Description: TCR Routine Monitoring Violation 01/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: TCR PN Routine Monitoring Violation 01/2008 - Failure to post public notice for not

collecting any routine monitoring sample(s).

Date: 08/25/2008 (700063) CN602700494

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(A)

Description: Failure to obtain interim approval from PDW.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)
30 TAC Chapter 290, SubChapter D 290.43(e)

Description: Failure to provide facility fencing

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(e)(4)(A)

Description: Failure to provide an adequately licensed operator.

Self Report? NO Classification: Minor

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

Description: Failure to maintain a Monitoring Plan.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(i)(III)
30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(ii)(III)
30 TAC Chapter 290, SubChapter F 290.110(c)(5)(B)

Description: Failure to adequately maintain monthly operations report.

Date: 11/19/2008 (721561) CN602700494

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)

Description: TCR Repeat Monitoring Violation 09/2008 - Failure to collect all repeats following a coliform found result.

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** | § | **BEFORE THE** |
| **ENFORCEMENT ACTION** | § | |
| **CONCERNING** | § | **TEXAS COMMISSION ON** |
| **IH 10/FIS BUILDING, L.P.** | § | |
| **RN104394366** | § | **ENVIRONMENTAL QUALITY** |

**AGREED ORDER**
**DOCKET NO. 2009-0063-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 IH 10/FIS Building, L.P. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates an office buiding with a public water supply at 28025 Interstate Highway 10 West, Bexar County, Texas (the "Facility") that has one service connection and serves at least 25 people per day for at least 60 days per year.

2. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

3. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about December 24, 2008.

4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

5. An administrative penalty in the amount of Two Thousand Six Hundred Sixty-Five Dollars ($2,665) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand One Hundred Thirty-Two Dollars ($2,132) of the administrative penalty and Five Hundred Thirty-Three Dollars ($533) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this

Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

7. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

8. The Executive Director recognizes that the Respondent began collecting water samples in accordance with the coliform monitoring requirements as of October 2008.

9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

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

1. Failed to collect routine coliform samples for the months of October 2007 through April 2008 and failed to provide public notification of the failure to sample for the months of October 2007 through April 2008, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B), and TEX. HEALTH & SAFETY CODE § 341.033(d), as documented during a record review conducted on September 1, 2008.

2. Failed to collect a set of repeat coliform samples within 24 hours of being notified of a total coliform-positive sample result found in September 2008, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(3)(A)(ii), as documented during a record review conducted on September 1, 2008.

## III. DENIALS

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

## IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: IH 10/FIS Building, L.P., Docket No. 2009-0063-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 Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

4. 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.

5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

# SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 4/2/2009
For the Executive Director 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.

_____ 2/23/2009
Signature Date

JOHN T JOSEPH SVP BUSINESS ADMIN - AAM Inc
Name (Printed or typed) Title
Authorized Representative of
IH 10/FIS Building, L.P.

**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.