

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2008-0975-PWS-E TCEQ ID: RN105504567 CASE NO.: 36058
RESPONDENT NAME: CAIN ADDITION HOMEOWNERS ASSOCIATION CAHA**

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 AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION OCCURRED: County Road 2327, Kleberg County</p> <p>TYPE OF OPERATION: Public water supply</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: One complaint has been received. The complaint alleged that the residents in Cain subdivision were without water service on October 5, 2007. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: The Complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 4, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Laurencia Fasoyiro, Litigation Division, MC 175, (713) 422-8914 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Mr. Epifano Villarreal, Water Enforcement Section, MC R-13, (210) 403-4033 TCEQ Regional Contact: Mr. David Kennebeck, Corpus Christi Regional Office, MC R-14, (361) 825-3111 Respondent: Mr. Albert Chavez, Director, Cain Addition Homeowner Association CAHA, 1160 East County Road 2327, Riviera, TX 78379 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: October 5, 2007</p> <p>Date of Investigation Relating to this Case: November 28, 2007</p> <p>Date of NOE Relating to this Case: June 5, 2008</p> <p>Background Facts: The EDPRP was filed on October 22, 2008 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 October 25, 2008, as evidenced by the signature on the card. The Respondent has failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>PWS:</p> <p>1. Failed to provide disinfection facilities for microbiological control and distribution protection [30 TEX. ADMIN. CODE § 290.42(b)(1)].</p> <p>2. Failed to provide written notification to the Commission of the startup of a new public water system and failed to provide plans and specifications, and a business plan for the water system [30 TEX. ADMIN. CODE § 290.39(m), (c)(3)(A) and (B), and TEX. HEALTH & SAFETY CODE § 341.035(c)].</p>	<p>Total Assessed: \$1,850</p> <p>Total Deferred: \$0 <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: \$1,850</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 1, 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 10 days, install and begin operating disinfection facilities to continuously maintain an adequate disinfectant residual throughout the distribution system for the purpose of microbiological control and distribution protection. 2. Within 30 days: <ol style="list-style-type: none"> a. Submit for approval plans and specifications prepared under the direction of a licensed professional engineer and a business plan that demonstrates that the Respondent has available the financial, managerial, and technical capability to ensure future operation of the system; and b. Respond completely and adequately to all requests for information concerning the start-up notification within 15 days after the date of such requests, or by any other deadline specified in writing. 3. Within 45 days, submit written certification to demonstrate compliance with the above Ordering Provisions.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision April 29, 2008

DATES	Assigned	8-Jun-2008	Screening	16-Jun-2008	EPA Due	
	PCW	19-Sep-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	Cain Addition HomeOwners Association CAHA		
Reg. Ent. Ref. No.	RN105504567		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36058	No. of Violations	2
Docket No.	2008-0975-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Epifanio Villarreal
		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	\$1,850
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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.

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No penalty enhancement due to a lack of compliance history.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$188
 Approx. Cost of Compliance: \$2,500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,850
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$1,850
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,850
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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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	\$1,850
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Screening Date 16-Jun-2008

Docket No. 2008-0975-PWS-E

PCW

Respondent Cain Addition HomeOwners Association CAHA

Policy Revision 2 (September 2002)

Case ID No. 36058

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN105504567

Media [Statute] Public Water Supply

Enf. Coordinator Epifanio Villarreal

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 (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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) 0%

>> **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

No penalty enhancement due to a lack of compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 16-Jun-2008		Docket No. 2008-0975-PWS-E		PCW
Respondent Cain Addition HomeOwners Association CAHA			<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 36058			<i>PCW Revision April 29, 2008</i>	
Reg. Ent. Reference No. RN105504567				
Media [Statute] Public Water Supply				
Enf. Coordinator Epifanio Villarreal				
Violation Number	<input type="text" value="1"/>			
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 290.42(b)(1)"/>			
Violation Description	<input type="text" value="Failed to provide disinfection facilities for microbiological control and distribution protection. Specifically, at the time of the investigation, it was documented that the water system did not have any disinfection facilities to disinfect the groundwater supplied from the well."/>			
Base Penalty				<input type="text" value="\$1,000"/>
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Percent <input type="text" value="25%"/>
>> Programmatic Matrix				
Matrix Notes	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Percent <input type="text" value="0%"/>			
<input type="text" value="Failing to provide disinfection facilities would not allow a means for microbiological control and proper disinfection of the water exposing customers of the water supply to significant amounts of contaminants, which would exceed levels that are protective of human health."/>				
Adjustment				<input type="text" value="\$750"/>
<input type="text" value="\$250"/>				
Violation Events				
Number of Violation Events		<input type="text" value="7"/>	Number of violation days	
		<input type="text" value="202"/>		
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$1,750"/>	
	monthly	<input checked="" type="checkbox"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
<input type="text" value="Seven monthly events are recommended from the date of the investigation, November 28, 2007 to the date of screening, June 16, 2008."/>				
Good Faith Efforts to Comply				
		0.0% Reduction	<input type="text" value="\$0"/>	
		<small>Before NOV</small>	<small>NOV to EDRP/Settlement Offer</small>	
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input type="text"/>		
N/A	<input checked="" type="checkbox"/>	<small>(mark with x)</small>		
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>			
Violation Subtotal				<input type="text" value="\$1,750"/>
Economic Benefit (EB) for this violation				
Statutory Limit Test				
Estimated EB Amount		<input type="text" value="\$72"/>	Violation Final Penalty Total <input type="text" value="\$1,750"/>	
This violation Final Assessed Penalty (adjusted for limits)				<input type="text" value="\$1,750"/>

Economic Benefit Worksheet

Respondent: Cain Addition HomeOwners Association CAHA

Case ID No.: 36058

Reg. Ent. Reference No.: RN105504567

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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Delayed Costs

Equipment	\$1,000	28-Nov-2007	10-Dec-2008	1.04	\$3	\$69	\$72
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the amount to provide disinfection facilities for microbiological control and distribution protection, calculated from the date of the investigation to the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,000

TOTAL

\$72

Screening Date 16-Jun-2008	Docket No. 2008-0975-PWS-E	PCW	
Respondent Cain Addition HomeOwners Association CAHA	<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 36058	<i>PCW Revision April 29, 2008</i>		
Reg. Ent. Reference No. RN105504567			
Media [Statute] Public Water Supply			
Enf. Coordinator Epifanio Villarreal			
Violation Number 2			
Rule Cite(s)	30 Tex. Admin. Code § 290.39(c)(3)(A) and (B) and 290.39(m), and Tex Health & Safety Code § 341.035(c)		
Violation Description	Failed to provide written notification to the Commission of the startup of a new public water system and failed to provide plans and specifications, and a business plan for the water system.		
Base Penalty		\$1,000	
>> Environmental, Property and Human Health Matrix			
OR	Release	Harm	
		Major Moderate Minor	
	Actual	Potential	Percent 0%
>> Programmatic Matrix			
	Falsification	Major Moderate Minor	
	Potential	x	Percent 10%
Matrix Notes	100% of the rule requirement was not met.		
Adjustment		\$900	
		\$100	
Violation Events			
Number of Violation Events 1		Number of violation days 202	
<i>mark only one with an x</i>	daily	Potential	
	monthly	Actual	
	quarterly	Potential	
	semiannual	Actual	
	annual	Potential	
	single event	Actual	Violation Base Penalty \$100
One single event is recommended.			
Good Faith Efforts to Comply		0.0% Reduction	\$0
	Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	Potential	Actual	
Ordinary	Potential	Actual	
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 \$115		Violation Final Penalty Total \$100	
		This violation Final Assessed Penalty (adjusted for limits) \$100	

Economic Benefit Worksheet

Respondent: Cain Addition HomeOwners Association CAHA
Case ID No.: 36058
Reg. Ent. Reference No.: RN105504567
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)	\$1,500	28-Nov-2007	1-Jan-2009	1.10	\$5	\$110	\$115
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 The delayed cost includes the amount to submit plans and specifications and a business plan to the Commission, calculated from the date of the investigation to the estimated date of compliance.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs
 (This section is currently blank)

Approx. Cost of Compliance	\$1,500	TOTAL	\$115
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Compliance History

Customer/Respondent/Owner-Operator: CN603349812 Cain Addition HomeOwners Association CAHA Classification: Rating:
Regulated Entity: RN105504567 CAIN SUBDIVISION WATER SUPPLY Classification: Site Rating:
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1370036
Location: COUNTY ROAD 2327, KLEBERG COUNTY, TEXAS
TCEQ Region: REGION 14 - CORPUS CHRISTI
Date Compliance History Prepared: June 16, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 16, 2003 to June 16, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Epi Villarreal Phone: 210-403-4033

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? 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

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.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - 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
CAIN ADDITION HOMEOWNERS
ASSOCIATION CAHA
RN105504567**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-0975-PWS-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary 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 Cain Addition HomeOwners Association CAHA ("Cain").

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

FINDINGS OF FACT

1. Cain owns and operates a public water supply at County Road 2327, Kleberg County, Texas (the "Facility").
2. The Facility has approximately 17 service connections. The Facility serves at least 25 people per day for at least 60 days per year and provides water for human consumption. As such, the Facility is a public water system as defined in 30 TEX. ADMIN CODE § 290.38(63).
3. During an inspection conducted on November 28, 2007, a TCEQ Corpus Christi Regional Office investigator documented that Cain:
 - a. Failed to provide disinfection facilities for microbiological control and distribution protection. Specifically, the water system did not have any disinfection facilities to disinfect the groundwater supplied from the well; and
 - b. Failed to provide written notification to the Commission of the startup of a new public water system and failed to provide plans and specifications, and a business plan for the water system.

4. Cain received notice of the violations on or about June 10, 2008.
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 Cain Addition HomeOwners Association CAHA" (the "EDPRP") in the TCEQ Chief Clerk's office on October 22, 2008.
6. By letter dated October 22, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Cain with notice of the EDPRP. According to the return receipt "green card", Cain received notice of the EDPRP on October 25, 2008, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Cain received notice of the EDPRP, provided by the Executive Director. Cain failed to file an answer to the EDPRP, 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, Cain 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., Cain failed to provide disinfection facilities for microbiological control and distribution protection, in violation of 30 TEX. ADMIN. CODE § 290.42(b)(1).
3. As evidenced by Finding of Fact No. 3.b., Cain failed to provide written notification to the Commission of the startup of a new public water system and failed to provide plans and specifications, and a business plan for the water system, in violation of 30 TEX. ADMIN. CODE § 290.39(m), (c)(3)(A) and (B) and TEX. HEALTH & SAFETY CODE § 341.035(c).
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Cain with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 7, Cain has failed to file a timely answer to the EDPRP, 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 Cain and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Cain for violations of the Texas Health & 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.
7. An administrative penalty in the amount of one thousand eight hundred fifty dollars (\$1,850.00) 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.
8. 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. Cain is assessed an administrative penalty in the amount of one thousand eight hundred fifty dollars (\$1,850.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Cain'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: Cain Addition HomeOwners Association CAHA; Docket No. 2008-0975-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. Cain shall undertake the following technical requirements:
 - a. Within 10 days after the effective date of this Order, Cain shall install and begin operating disinfection facilities to continuously maintain an adequate disinfectant residual throughout the distribution system for the purpose of microbiological control and distribution protection, in accordance with 30 TEX. ADMIN. CODE § 290.42.

- b. Within 30 days after the effective date of this Order Cain shall:
- i. Submit for approval plans and specifications prepared under the direction of a licensed professional engineer and a business plan that demonstrates that the Respondent has available the financial, managerial, and technical capability to ensure future operation of the system, in accordance with 30 TEX. ADMIN. CODE § 290.39. The plans, specifications and the business plan 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. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the start-up notification within 15 days after the date of such requests, or by any other deadline specified in writing.

- c. Within 45 days after the effective date of this Order, Cain shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions 2.a. 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."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality

P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Cain. Cain 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 Cain shall be made in writing to the Executive Director. Extensions are not effective until Cain 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 Cain if the Executive Director determines that Cain 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF LAURENCIA N. FASOYIRO

STATE OF TEXAS §
COUNTY OF HARRIS §

“My name is Laurencia N. Fasoyiro. 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, I 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 Cain Addition HomeOwners Association CAHA” (the “EDPRP”) was filed with the Office of the Chief Clerk on October 22, 2008.

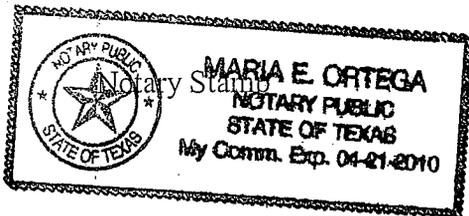
I sent the EDPRP to Cain at its last known address on October 22, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Cain received notice of the EDPRP on October 25, 2008, as evidenced by the signature on the card.

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

Laurencia N. Fasoyiro
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Laurencia N. Fasoyiro, 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 12 day of Feb, A.D., 2009.



Notary Signature