

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2008-1824-PWS-E TCEQ ID: RN101195857 CASE NO.: 36839  
RESPONDENT NAME: LEO BIRD DBA WALNUT RIDGE ESTATES WATER SYSTEM**

<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 HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** Highway 147, three miles northeast of Zavalla, Angelina County

**TYPE OF OPERATION:** Public water supply

**SMALL BUSINESS:**  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 expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired June 22, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  
**TCEQ Enforcement Coordinator:** Mr. Epifanio Villarreal, Water Enforcement Section, MC R-14, (361) 825-3425  
**TCEQ Regional Contact:** Mr. Ronald Hebert, Beaumont Regional Office, MC R-10, (409) 898-3838  
**Respondent:** Mr. Leo Bird, Owner, Walnut Ridge Estates Water System, P.O. Box 427, Zavalla, Texas 75980-0427  
**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> October 7, 2008</p> <p><b>Date of NOE Relating to this Case:</b> October 9, 2008</p> <p><b>Background Facts:</b> The EDPRP was filed on January 30, 2009. An Agreed Order was signed on April 1, 2009.</p> <p><b>PWS:</b> Failed to comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for trihalomethanes ("TTHM"), based on a running annual average [30 TEX ADMIN. CODE § 290.113(f)(4) and TEX HEALTH &amp; SAFETY CODE § 341.0315(c)].</p>	<p><b>Total Assessed:</b> \$354</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b> \$154/\$200</p> <p>The Respondent paid \$154 of the administrative penalty. The remaining amount of \$200 shall be payable in two monthly payments of \$100 each.</p> <p><b>Site Compliance History Classification</b> N/A</p> <p><b>Person Compliance History Classification</b> N/A</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 Order Justification:</b> Three repeated enforcement actions (NOVs) over the prior five year period for the same violation.</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 365 days, return to compliance with the running annual average MCL for TTHM.</li> <li>2. Within 380 days, submit written certification demonstrating compliance.</li> </ol>



Policy Revision 2 (September 2002)

# Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

<b>DATES</b>	<b>Assigned</b>	24-Nov-2008			
	<b>PCW</b>	25-Nov-2008	<b>Screening</b>	25-Nov-2008	<b>EPA Due</b> 1-Sep-2007

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Leo Bird dba Walnut Ridge Estates Water System
<b>Reg. Ent. Ref. No.</b>	RN101195857
<b>Facility/Site Region</b>	10-Beaumont
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	36839	<b>No. of Violations</b>	1
<b>Docket No.</b>	2008-1824-PWS-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Epifanio Villarreal
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

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

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

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

Notes: The penalty enhancement is due to three prior Notices of Violation ("NOV"s) for violations that are the same as the violations in the current enforcement action and one prior dissimilar NOV.

**Culpability**   Enhancement **Subtotal 4**

Notes: The Respondent was issued an alert letter for a total trihalomethanes ("TTHM") exceedance on October 17, 2007.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  Enhancement\* **Subtotal 6**

Total EB Amounts    
 Approx. Cost of Compliance    
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

Notes:

No deferral is recommended for Findings Order

**PAYABLE PENALTY**

**Screening Date** 25-Nov-2008

**Docket No.** 2008-1824-PWS-E

**PCW**

**Respondent** Leo Bird dba Walnut Ridge Estates Water System

Policy Revision 2 (September 2002)

**Case ID No.** 36839

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN101195857

**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> )	3	15%
	Other written NOVs	1	2%
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)** 17%

>> **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 three prior Notices of Violation ("NOV"s) for violations that are the same as the violations in the current enforcement action and one prior dissimilar NOV.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 17%

<b>Screening Date</b> 25-Nov-2008	<b>Docket No.</b> 2008-1824-PWS-E	<b>PCW</b>
<b>Respondent</b> Leo Bird dba Walnut Ridge Estates Water System		<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b> 36839		<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b> RN101195857		
<b>Media [Statute]</b> Public Water Supply		
<b>Enf. Coordinator</b> Epifanio Villarreal		
<b>Violation Number</b> <input type="text" value="1"/>		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 290.113(f)(4) and Tex. Health & Safety Code § 341.0315(c)	
<b>Violation Description</b>	Failed to comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for TTHM, based on a running annual average. Specifically, the running annual average concentrations for TTHM were 0.141 mg/L for the fourth quarter of 2007, 0.205 mg/L for the first quarter of 2008, and 0.278 mg/L for the second quarter of 2008.	
	<b>Base Penalty</b>	<input type="text" value="\$1,000"/>
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>		
OR	<b>Release</b>	<b>Harm</b>
		Major      Moderate      Minor
	Actual	<input type="text" value="x"/>
	Potential	<input type="text"/>
	<b>Percent</b>	<input type="text" value="25%"/>
<b>&gt;&gt; Programmatic Matrix</b>		
	Falsification	Major      Moderate      Minor
	<input type="text"/>	<input type="text"/>
	<b>Percent</b>	<input type="text" value="0%"/>
<b>Matrix Notes</b>	Exceeding the MCL for TTHM exposes customers of the water supply to significant amounts of contaminants that do not exceed levels that are protective of human health.	
	<b>Adjustment</b>	<input type="text" value="\$750"/>
		<input type="text" value="\$250"/>
<b>Violation Events</b>		
	Number of Violation Events	<input type="text" value="1"/>
		<input type="text" value="273"/> Number of violation days
<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input checked="" type="text" value="x"/>
	single event	<input type="text"/>
	<b>Violation Base Penalty</b>	<input type="text" value="\$250"/>
One annual event is recommended.		
<b>Good Faith Efforts to Comply</b>		
	<b>0.0% Reduction</b>	<input type="text" value="\$0"/>
	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)
<b>Notes</b>	The Respondent does not meet the good faith criteria for this violation.	
	<b>Violation Subtotal</b>	<input type="text" value="\$250"/>
<b>Economic Benefit (EB) for this violation</b>		
<b>Statutory Limit Test</b>		
Estimated EB Amount	<input type="text" value="\$893"/>	Violation Final Penalty Total
		<input type="text" value="\$354"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$354"/>

### Economic Benefit Worksheet

**Respondent** Leo Bird dba Walnut Ridge Estates Water System  
**Case ID No.** 36839  
**Reg. Ent. Reference No.** RN101195857  
**Media** Public Water Supply  
**Violation No.** 1

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$5,000	13-Nov-2007	1-Jun-2010	2.55	\$43	\$850	\$893
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 implement an alternative method of disinfection, calculated from the first day of noncompliance to the estimated date of compliance.

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

**Notes for AVOIDED costs**

**Approx. Cost of Compliance** \$5,000 **TOTAL** \$893

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN602734550	BIRD, LEO	Classification:	Rating:
Regulated Entity:	RN101195857	WALNUT RIDGE ESTATES WATER SYSTEM	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY REGISTRATION			0030006
Location:	OFF HWY 147 3 MILES NORTHEAST OF ZAVALLA, ANGELINA COUNTY, TX			
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	November 25, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	November 25, 2003 to November 25, 2008			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	<u>Epi Villarreal</u>	Phone:	<u>361-825-3425</u>	

## 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.)
 

1	12/31/2004	(345053)
2	09/06/2005	(401834)
3	02/05/2008	(704921)
4	04/03/2008	(705970)
5	08/28/2008	(705975)
6	11/17/2008	(706770)

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

- |   |  |                 |       |
|---|--|-----------------|-------|
| 1 | Date: 12/31/2004 (345053)  |                 |       |
|   | Self Report? NO  | Classification: | Minor |
|   | Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(2)  |                 |       |
|   | Description: Failure to disinfect water from Well # 2 prior to ground storage.   |                 |       |
|   | Self Report? NO  | Classification: | Minor |
|   | Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(i)  |                 |       |
|   | Description: Failure to maintain a record of amount of chlorine used each week.  |                 |       |
|   | Self Report? NO  | Classification: | Minor |
|   | Citation: 30 TAC Chapter 290, SubChapter D 290.39(i)   |                 |       |
|   | Description: Failure to collect monthly raw water sample as required in exception for sanitary control easement granted August 18, 2000. |                 |       |
|   | Self Report? NO  | Classification: | Minor |
|   | Citation: 30 TAC Chapter 290, SubChapter D 290.46(v)   |                 |       |
|   | Description: Failure to install all electrical wiring in conduit.  |                 |       |
|   | Self Report? NO  | Classification: | Minor |
|   | Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(M)   |                 |       |
|   | Description: Failure to provide a sampling tap prior to chlorination point on well # 1.  |                 |       |

Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.41(c)(3)(K)		
Description:	Failure to properly screen well # 1 casing vent with 16-mesh or finer corrosion-resistant screening material.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 288, SubChapter B 288.20		
Description:	Failure to have a Drought Contingency Plan at the time of the investigation.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.46(m)(1)		
Description:	Failure to perform annual inspections of the pressure tanks.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.43(c)(3)		
Description:	Failure to provide the ground storage tanks with a properly designed overflow pipe which is equipped with a hinged flap valve.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.46(l)		
Description:	Failure to adopt an adequate plumbing ordinance, regulations or a service agreement with provisions for proper enforcement.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.46(m)(1)		
Description:	Failure to perform annual inspections of the 3 ground storage tanks.		
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 291, SubChapter F 291.93(3)(B)		
Description:	Your water system is at 98% of its well production capacity and at 96 % of its service pump capacity.		
2	Date: 02/05/2008 (704921)	Classification:	Moderate
	Self Report? NO		
	Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)		
	Description: Violated the maximum contaminant level for trihalomethanes during the fourth quarter of 2007.		
3	Date: 04/03/2008 (705970)	Classification:	Moderate
	Self Report? NO		
	Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)		
	Description: Violated the maximum contaminant level for trihalomethanes during the first quarter of 2008.		
4	Date: 08/28/2008 (705975)	Classification:	Moderate
	Self Report? NO		
	Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)		
	Description: Violated the maximum contaminant level for trihalomethanes during the second quarter of 2008.		

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 LEO BIRD  
DBA WALNUT RIDGE  
ESTATES WATER SYSTEM,  
RN101195857

§  
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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2008-1824-PWS-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Leo Bird dba Walnut Ridge Estates Water System ("Mr. Bird") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Bird, presented this agreement to the Commission.

Mr. Bird understands that he 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, Mr. Bird agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement 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 Mr. Bird.

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

**FINDINGS OF FACT**

1. Mr. Bird owns and operates a public water supply located off Highway 147, three miles northeast of Zavalla, Angelina County, Texas (the "Facility").
2. The Facility provides water for human consumption, has 65 service connections, and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water supply system as defined in 30 TEX. ADMIN. CODE § 290.38(63).

3. During a record review conducted on October 7, 2008, a TCEQ Central Office investigator documented that Mr. Bird failed to comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for trihalomethanes ("TTHM"), based on a running annual average. Specifically, the running annual average concentrations for TTHM were 0.141 mg/L for the fourth quarter of 2007, 0.205 mg/L for the first quarter of 2008, and 0.278 mg/L for the second quarter of 2008.
4. Mr. Bird received notice of the violations on or about October 14, 2008.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Bird 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, Mr. Bird failed to comply with the MCL of 0.080 mg/L for TTHM, based on a running annual average, in violation of 30 TEX. ADMIN. CODE § 290.113(f)(4) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Mr. Bird for violations of 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.
4. An administrative penalty in the amount of three hundred fifty-four dollars (\$354.00) 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. Mr. Bird paid one hundred fifty-four dollars (\$154.00) of the administrative penalty. The remaining amount of two hundred dollars (\$200.00) of the administrative penalty shall be payable in two monthly payments of one hundred dollars (\$100.00) each, pursuant to 30 TEX. ADMIN. CODE § 70.9(a). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payment shall be remitted not later than 30 days following the due date of the previous payment. If Mr. Bird fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Mr. Bird to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Bird to timely and satisfactorily comply with all of the terms of this Agreed Order.

## ORDERING PROVISIONS

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

1. Mr. Bird is assessed an administrative penalty in the amount of three hundred fifty-four dollars (\$354.00) as set forth in Conclusion of Law No. 4 for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Mr. Bird'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 "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Leo Bird dba Walnut Ridge Estates Water System; Docket No. 2008-1824-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. Mr. Bird shall undertake the following technical requirements:
  - a. Within 365 days after the effective date of this Agreed Order, Mr. Bird shall return to compliance with the running annual average MCL for TTHM, in accordance with 30 TEX. ADMIN. CODE § 290.113.
  - b. Within 380 days after the effective date of this Agreed Order, Mr. Bird shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision 2.a. above.

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."

Mr. Bird shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

DBP Compliance Coordinator  
Water Supply Division/PDWS, MC 155  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Bird. Mr. Bird is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Bird shall be made in writing to the Executive Director. Extensions are not effective until Mr. Bird receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. 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 Mr. Bird if the Executive Director determines that Mr. Bird has not complied with one or more of the terms or conditions in this Agreed Order.
6. 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.
7. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Bird 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.

8. 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.
9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date is the date of hand-delivery of the Order to Mr. Bird, or three days after the date on which the Commission mails notice of the Order to Mr. Bird, whichever is earlier.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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



\_\_\_\_\_  
For the Executive Director

6/17/2009

\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Leo Bird dba Walnut Ridge Estates Water System. I represent that I am authorized to agree to the attached Agreed Order on behalf of Leo Bird dba Walnut Ridge Estates Water System, 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 also understand that failure to comply with the Ordering Provisions in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on Mr. Bird's compliance history;
- Greater scrutiny of any permit applications submitted by Mr. Bird;
- 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 against Mr. Bird;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

4-1-9  
\_\_\_\_\_  
Date

LEO W BIRD  
\_\_\_\_\_  
Name (printed or typed)  
Authorized Representative  
Leo Bird dba Walnut Ridge Estates Water System

\_\_\_\_\_  
Owner  
Title