

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2009-0320-PWS-E TCEQ ID: RN105504567 CASE NO.: 37229**  
**RESPONDENT NAME: CAIN ADDITION HOME OWNERS ASSOCIATION CAHA**

<b>ORDER TYPE:</b>		
<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	
<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
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 1160 E County Road 2327, Riviera, Kleberg County</p> <p><b>TYPE OF OPERATION:</b> public water supply system</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on September 7, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Ms. Rebecca M. Combs, Litigation Division, MC 175, (512) 239-6939  Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  <b>TCEQ Enforcement Coordinator:</b> Mr. Epifanio Villarreal, Water Enforcement Section, MC R-14, (361) 825-3425  <b>TCEQ Regional Contact:</b> Mr. David Kennebeck, Corpus Christi Regional Office, MC R-14, (361) 825-3111  <b>Respondent:</b> Mr. Roberto Chavez, Director, Cain Addition Home Owners Association CAHA, 1156 East CR 2327, Riviera, Texas 78379  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> N/A</p> <p><b>Dates of Investigation Relating to this Case:</b> February 20, 2009 and March 2, 2009</p> <p><b>Date of NOE Relating to this Case:</b> February 20, 2009</p> <p><b>Background Facts:</b> The EDPRP was filed on April 27, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on May 1, 2009, as evidenced by the signature on the card. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> The Respondent is not yet in compliance. The Respondent owes \$83.85 in past-due fees.</p> <p><b>PWS:</b></p> <p>1. Failed to collect routine distribution water samples for coliform analysis for the months of May 2008 through January 2009, and failed to provide public notification of the failure to sample for the months of May 2008 through January 2009 [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(ii) and 290.122(c)(2)(A), and TEX. HEALTH &amp; SAFETY CODE § 341.033(d)].</p> <p>2. Failed to pay all annual and late Public Health Service fees for TCEQ Financial Administration Account No. 91370036 for Fiscal Year 2009 [30 TEX. ADMIN. CODE § 290.51(a)(3) and TEX. WATER CODE § 5.702].</p>	<p><b>Total Assessed:</b> \$3,300</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 Due to General Revenue:</b> \$3,300</p> <p>This is a Default Order. The Respondents have not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</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>Ordering Provisions:</b> The Respondent shall implement the following corrective measures:</p> <ol style="list-style-type: none"> <li>1. Within 10 days:             <ol style="list-style-type: none"> <li>a. Implement procedures to ensure all necessary public notifications are provided in a timely manner to customers of the water Facility; and</li> <li>b. Begin collecting monthly coliform samples.</li> </ol> </li> <li>2. Within 15 days, submit written certification and include detailed supporting documentation to demonstrate compliance with Ordering Provision Nos. 1.a and b.</li> <li>3. Within 30 days, pay all late Public Health Service-fees.</li> <li>4. Within 45 days, submit written certification and include detailed supporting documentation to demonstrate compliance with Ordering Provision No.3.</li> <li>5. Within 180 days, comply with all applicable coliform monitoring requirements and provide water that meets the provisions regarding microbial contaminants for the Facility.</li> <li>6. Within 195 days, submit written certification and include detailed supporting documentation to demonstrate compliance with Ordering Provision No. 5 above.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	23-Feb-2009	Screening	3-Mar-2009	EPA Due	1-Jul-2009
	PCW	3-Mar-2009				

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

<b>CASE INFORMATION</b>			
Enf./Case ID No.	37229	No. of Violations	2
Docket No.	2009-0320-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
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**

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

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

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

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

**Culpability**   **Subtotal 4**

Notes: The Respondent does not meet the culpability criteria.

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

**Economic Benefit**  **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: Enhancement recommended for recovery of avoided costs of compliance.

**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 Orders.

**PAYABLE PENALTY**

Screening Date 3-Mar-2009

Docket No. 2009-0320-PWS-E

PCW

Respondent Cain Addition Home Owners Association CAHA

Policy Revision 2 (September 2002)

Case ID No. 37229

PCW Revision October 30, 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 (number of NOVs meeting criteria)	5	25%
	Other written NOVs	0	0%
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%
<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) 25%

>> 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 five prior Notices of Violation ("NOV"s) for violations that are the same as the violations in the current enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 25%

<b>Screening Date</b> 3-Mar-2009	<b>Docket No.</b> 2009-0320-PWS-E	<b>PCW</b>				
<b>Respondent</b> Cain Addition Home Owners Association CAHA		<i>Policy Revision 2 (September 2002)</i>				
<b>Case ID No.</b> 37229		<i>PCW Revision October 30, 2008</i>				
<b>Reg. Ent. Reference No.</b> RN105504567						
<b>Media [Statute]</b> Public Water Supply						
<b>Enf. Coordinator</b> Epifanio Villarreal						
<b>Violation Number</b> 1						
<b>Rule Cite(s)</b> 30 Tex. Admin. Code §§ 290.109(c)(2)(A)(ii) and 290.122(c)(2)(A), and Tex. Health & Safety Code § 341.033(d)						
<b>Violation Description</b> Failed to collect routine distribution water samples for coliform analysis for the months of May 2008 through January 2009 and failed to provide public notification of the failure to sample for the months of May 2008 through January 2009.						
<b>Base Penalty</b>		\$1,000				
<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>						
OR	<b>Harm</b>			Percent	25%	
	<b>Release</b>	Major	Moderate			Minor
	Actual	<input type="text"/>	<input type="text"/>			<input type="text"/>
	Potential	x	<input type="text"/>	<input type="text"/>		
<b>&gt;&gt; Programmatic Matrix</b>						
<b>Falsification</b>			<b>Harm</b>			
Major			Major			
Moderate			Moderate			
Minor			Minor			
<input type="text"/>			<input type="text"/>			
			Percent			0%
<b>Matrix Notes</b>	Failure to collect water samples for coliform analysis may expose customers of the public water supply to a significant amount of undetected contaminants that exceed levels protective of human health.					
<b>Adjustment</b>					\$750	
					\$250	
<b>Violation Events</b>						
Number of Violation Events		9	Number of violation days		275	
mark only one with an x	daily	<input type="text"/>	Violation Base Penalty			\$2,250
	weekly	<input type="text"/>				
	monthly	x				
	quarterly	<input type="text"/>				
	semiannual	<input type="text"/>				
	annual	<input type="text"/>				
	single event	<input type="text"/>				
Nine monthly events are recommended.						
<b>Good Faith Efforts to Comply</b>		0.0% Reduction		\$0		
		Before NOV		NOV to EDRP/Settlement Offer		
Extraordinary		<input type="text"/>		<input type="text"/>		
Ordinary		<input type="text"/>		<input type="text"/>		
N/A		x		(mark with x)		
<b>Notes</b>		The Respondent does not meet the good faith criteria for this violation.				
<b>Violation Subtotal</b>					\$2,250	
<b>Economic Benefit (EB) for this violation</b>			<b>Statutory Limit Test</b>			
Estimated EB Amount		\$488		Violation Final Penalty Total		\$3,300
<b>This violation Final Assessed Penalty (adjusted for limits)</b>					\$3,300	

### Economic Benefit Worksheet

**Respondent** Cain Addition Home Owners Association CAHA  
**Case ID No.** 37229  
**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	Overtime Costs	EB Amount
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No commas or \$

**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				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)	\$450	1-May-2008	31-Jan-2009	1.67	\$38	\$450	\$488

Notes for AVOIDED costs

The avoided costs includes the amount to collect water samples for coliform analysis and provide public notification, calculated for the months when the violations occurred.

Approx. Cost of Compliance

\$450

**TOTAL**

\$488

<b>Screening Date</b> 3-Mar-2009	<b>Docket No.</b> 2009-0320-PWS-E	<b>PCW</b>
<b>Respondent</b> Cain Addition Home Owners Association CAHA	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 37229	<i>PCW Revision October 30, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN105504567		
<b>Media [Statute]</b> Public Water Supply		
<b>Enf. Coordinator</b> Epifanio Villarreal		
<b>Violation Number</b> <input type="text" value="2"/>		
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 290.51(a)(3) and Tex. Water Code § 5.702"/>	
<b>Violation Description</b>	<input 2009."="" 91370036="" account="" administration="" fees="" financial="" fiscal="" for="" no.="" phs")="" tceq="" type="text" value="Failed to pay all annual and late Public Health Service (" year=""/>	
<b>Base Penalty</b>		<input type="text" value="\$1,000"/>

<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
<b>OR</b>	<b>Harm</b>				
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>		<b>Minor</b>
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				<b>Percent</b> <input type="text" value="0%"/>	
<b>&gt;&gt; Programmatic Matrix</b>					
	<b>Falsification</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				<b>Percent</b> <input type="text" value="0%"/>	
<b>Matrix Notes</b>	<input type="text"/>				
				<b>Adjustment</b> <input type="text" value="\$1,000"/>	
				<input type="text" value="\$0"/>	

<b>Violation Events</b>																	
	Number of Violation Events <input type="text"/>		Number of violation days <input type="text"/>														
<i>mark only one with an x</i>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td style="text-align: center;">daily</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">weekly</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">monthly</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">quarterly</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">semiannual</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">annual</td><td><input type="text"/></td></tr> <tr><td style="text-align: center;">single event</td><td><input type="text"/></td></tr> </table>	daily	<input type="text"/>	weekly	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>		<b>Violation Base Penalty</b> <input type="text" value="\$0"/>
daily	<input type="text"/>																
weekly	<input type="text"/>																
monthly	<input type="text"/>																
quarterly	<input type="text"/>																
semiannual	<input type="text"/>																
annual	<input type="text"/>																
single event	<input type="text"/>																
All penalties and interest will be determined by the Financial Administration Division at the next billing cycle.																	

<b>Good Faith Efforts to Comply</b>		<b>0.0% Reduction</b>	<input type="text" value="\$0"/>
	<b>Before NOV</b>	<b>NOV to EDRP/Settlement Offer</b>	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text"/>	
N/A	(mark with x)		
<b>Notes</b>	<input type="text"/>		
			<b>Violation Subtotal</b> <input type="text" value="\$0"/>

<b>Economic Benefit (EB) for this violation</b>		<b>Statutory Limit Test</b>	
<b>Estimated EB Amount</b> <input type="text" value="\$0"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$0"/>		
<b>This violation Final Assessed Penalty (adjusted for limits)</b>		<input type="text" value="\$0"/>	

## Economic Benefit Worksheet

**Respondent:** Cain Addition Home Owners Association CAHA

**Case ID No.:** 37229

**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
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No commas or \$

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

N/A

### 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

N/A

Approx. Cost of Compliance

\$0

**TOTAL**

\$0

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN603349812	Cain Addition Home Owners 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:	March 03, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 03, 2004 to March 03, 2009			

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

Name: Epi Villarreal Phone: 361-825-3425

### 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 | 02/10/2009 | (725132) |
| 2 | 02/16/2009 | (726722) |
| 3 | 02/16/2009 | (726724) |
| 4 | 02/17/2009 | (735614) |
| 5 | 02/17/2009 | (735665) |
| 6 | 02/20/2009 | (735705) |

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

Date: 07/31/2008 (725132)

Self Report? NO

Classification: Moderate

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

Description: TCR Routine Monitoring Violation 06/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO

Classification: Moderate

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

Description: TCR PN Routine Monitoring Violation 06/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 10/10/2008 (726722)

Self Report? NO

Classification: Moderate

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

Description: TCR Routine Monitoring Violation 08/2008 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: TCR PN Routine Monitoring Violation 08/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).  
 Date: 11/19/2008 (726724)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 09/2008 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: TCR PN Routine Monitoring Violation 09/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).  
 Date: 12/09/2008 (735614)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 10/2008 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: TCR PN Routine Monitoring Violation 10/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).  
 Date: 01/13/2009 (735665)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 11/2008 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: TCR PN Routine Monitoring Violation 11/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

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 HOME OWNERS  
ASSOCIATION CAHA;  
RN105504567

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BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2009-0320-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, TEX. WATER CODE ch. 5, 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 Home Owners Association CAHA ("CAHA").

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

**FINDINGS OF FACT**

1. CAHA operates a public water supply system located at 1160 E County Road 2327, Riviera, Kleberg County, Texas (the "Facility").
2. The Facility provides water for human consumption, has 17 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 system as defined in 30 TEX. ADMIN. CODE § 290.38(63).
3. During a record review investigation on February 20, 2009 and March 2, 2009, a TCEQ Central Office investigator documented that CAHA:
  - a. Failed to collect routine distribution water samples for coliform analysis for the months of May 2008 through January 2009, and failed to provide public notification of the failure to sample for the months of May 2008 through January 2009; and
  - b. Failed to pay all annual and late Public Health Service ("PHS") fees for TCEQ Financial Administration Account No. 91370036 for Fiscal Year 2009.

4. CAHA received notice of the violations on or about February 25, 2009.
5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Cain Addition Home Owners Association CAHA" (the "EDPRP") in the TCEQ Chief Clerk's office on April 27, 2009.
6. By letter dated April 27, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served CAHA with notice of the EDPRP. According to the return receipt "green card," CAHA received notice of the EDPRP on May 1, 2009, as evidenced by the signature on the card.
7. More than 20 days have elapsed since CAHA received notice of the EDPRP, provided by the Executive Director. CAHA 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, CAHA is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341, TEX. WATER CODE ch. 5 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., CAHA failed to collect routine distribution water samples for coliform analysis for the months of May 2008 through January 2009, and failed to provide public notification of the failure to sample for the months of May 2008 through January 2009, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(ii) and 290.122(c)(2)(A), and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. As evidenced by Finding of Fact No. 3.b., CAHA failed to pay all annual and late Public Health Service ("PHS") fees for TCEQ Financial Administration Account No. 91370036 for Fiscal Year 2009, in violation of 30 TEX. ADMIN. CODE § 290.51(a)(3) and TEX. WATER CODE § 5.702.
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served CAHA with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).

5. As evidenced by Finding of Fact No. 7, CAHA 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 CAHA 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 CAHA for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of three thousand three hundred dollars (\$3,300.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b).
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. CAHA is assessed an administrative penalty in the amount of three thousand three hundred dollars (\$3,300.00) for violations of TEX. HEALTH & SAFETY CODE ch. 341, TEX. WATER CODE ch. 5, and rules of the TCEQ. The payment of this administrative penalty and CAHA'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 Home Owners Association CAHA; Docket No. 2009-0320-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. CAHA shall undertake the following technical requirements:
  - a. Within 10 days after the effective date of this Order, CAHA shall:
    - i. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the water Facility, in accordance with 30 TEX. ADMIN. CODE § 290.122; and
    - ii. Begin collecting monthly coliform samples which are representative of the Facility, as required by 30 TEX. ADMIN. CODE § 290.109;
  - b. Within 15 days after the effective date of this Order, CAHA shall submit written documentation, as described in Ordering Provisions 2.g below, to demonstrate compliance with Ordering Provisions 2.a.i.-ii.
  - c. Within 30 days after the effective date of this Order, CAHA shall submit payment for the amount due for PHS fees on TCEQ Financial Administration Account No. 91370036, in accordance with 30 TEX. ADMIN. CODE § 290.51(a)(3).
  - d. Within 45 days after the effective date of this Order, CAHA shall submit written documentation, as detailed in Ordering Provisions No. 2.g. below, that certifies compliance with Ordering Provisions No. 2.c.
  - e. Within 180 days after the effective date of this Order, CAHA shall comply with all applicable coliform monitoring requirements and provide water that meets the provisions regarding microbial contaminants for the Facility, in accordance with 30 TEX. ADMIN. CODE § 290.109.
  - f. Within 195 days after the effective date of this Order, CAHA shall submit certification as required by Ordering Provisions No. 2.g. below that certifies compliance with Ordering Provisions No. 2.e.
  - g. The certifications, required by Ordering Provisions Nos. 2.b, 2.d. and 2.f. shall include detailed supporting documentation, including photographs, receipts, and/or

other records, to demonstrate compliance with the Ordering Provisions. 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.”

CAHA 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:

David Kennebeck, Water Section Manager  
Texas Commission on Environmental Quality  
Corpus Christi Regional Office  
6300 Ocean Drive, Unit 5839  
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 CAHA. CAHA 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 CAHA shall be made in writing to the Executive Director. Extensions are not effective until CAHA 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 CAHA if the Executive Director determines that CAHA 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

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For the Commission

**AFFIDAVIT OF REBECCA M. COMBS**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

"My name is Rebecca M. Combs. 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 Home Owners Association CAHA' (the 'EDPRP') with the Office of the Chief Clerk on April 27, 2009.

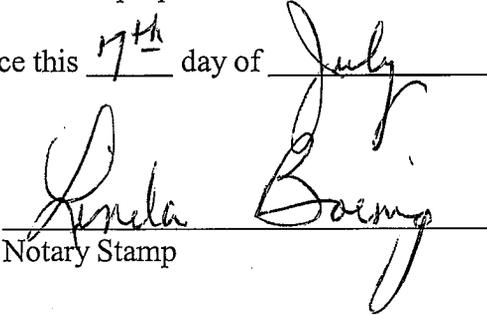
I sent the EDPRP to CAHA at its last known address on April 27, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt 'green card,' CAHA received notice of the EDPRP on May 1, 2009, as evidenced by the signature on the card.

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

  
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Rebecca M. Combs  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rebecca M. Combs, 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 17<sup>th</sup> day of July, 2009.

  
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Notary Stamp

