

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0438-PWS-E TCEQ ID: RN101228625 CASE NO.: 37367

RESPONDENT NAME: U.S. Department of Agriculture

ORDER TYPE:		
<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	
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(S) OCCURRED: USFS Angelina District, located approximately three miles northeast of Zavalla on Highway 147, Angelina County</p> <p>TYPE OF OPERATION: Work center that houses maintenance equipment and vehicles for the Forest Service</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: 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 August 10, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Stephen Thompson, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-2558; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Daniel Bowen, Associate Regional Attorney, U.S. Department of Agriculture, 101 South Main Street, Suite 351, Federal Building, Temple, Texas 76501-7686 Mr. Andrew Colaninno, Acting Forest Supervisor, U.S. Department of Agriculture, 415 South First Street, Suite 110, Lufkin, Texas 75901-3801 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: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 9, 2009</p> <p>Date of NOV/NOE Relating to this Case: March 11, 2009 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>Failure to comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter for total trihalomethanes ("TTHM"), based on a running annual average for the first quarter of 2007 through the fourth quarter of 2008 [30 TEX. ADMIN. CODE § 290.113(f)(4) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].</p>	<p>Total Assessed: \$825</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$825</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification: The Respondent has three repeated enforcement actions over the prior five year period for the same violation.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent, in response to this enforcement action, has agreed to take steps to provide water (which is compliant with TCEQ standards) for use by the Respondent's employees at the Facility for drinking, bathing and washing.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 36 months after the effective date of this Agreed Order and subject to the limitations contained in 31 U.S.C. § 1341, the Respondent will have completed construction of an upgrade to the water treatment system to address the MCL for TTHM in the water at the Facility;</p> <p>b. Within 48 months after the effective date of this Agreed Order and subject to the limitations contained in 31 U.S.C. § 1341, the Respondent shall return to compliance with the running annual average MCL for TTHM at the Facility; and</p> <p>c. Within 48 months plus 30 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision b.</p>

Additional ID No(s): PWS ID 0030103



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	23-Mar-2009			
	PCW	26-Mar-2009	Screening	26-Mar-2009	EPA Due 1-Aug-2008

RESPONDENT/FACILITY INFORMATION	
Respondent	U.S. Department of Agriculture
Reg. Ent. Ref. No.	RN101228625
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37367	No. of Violations	1
Docket No.	2009-0438-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Stephen Thompson
		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	\$500
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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	65.0% Enhancement	Subtotals 2, 3, & 7	\$325
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Notes Enhancement is due to 13 NOVs that contain violations that are the same as those contained in the current enforcement action.

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 \$1,313
 Approx. Cost of Compliance \$5,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$825
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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	\$825
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$825
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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

No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$825
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Screening Date 26-Mar-2009

Docket No. 2009-0438-PWS-E

PCW

Respondent U.S. Department of Agriculture

Policy Revision 2 (September 2002)

Case ID No. 37367

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101228625

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

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)	13	65%
	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) 65%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement is due to 13 NOVs that contain violations that are the same as those contained in the current enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 65%

Screening Date 26-Mar-2009	Docket No. 2009-0438-PWS-E	PCW	
Respondent U.S. Department of Agriculture	<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 37367	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No. RN101228625			
Media [Statute] Public Water Supply			
Enf. Coordinator Stephen Thompson			
Violation Number 1			
Rule Cite(s)	30 Tex. Admin. Code § 290.113(f)(4) and Tex. Health & Safety Code § 341.0315(c)		
Violation Description	Failed to comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for total trihalomethanes ("TTHM"), based on a running annual average for the first quarter of 2007 through the fourth quarter of 2008. See attached table.		
Base Penalty		\$1,000	
>> Environmental, Property and Human Health Matrix			
OR	Harm		
	Major	Moderate	Minor
Actual	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Percent			25%
>> Programmatic Matrix			
Falsification			
Major	Moderate	Minor	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Percent			0%
Matrix Notes	Customers of the water supply have been exposed to significant amounts of contaminants which did not exceed levels protective of human health.		
Adjustment			\$750
			\$250
Violation Events			
Number of Violation Events	2	Number of violation days	731
<i>mark only one with an x</i>	daily	<input type="checkbox"/>	Violation Base Penalty
	weekly	<input type="checkbox"/>	
	monthly	<input type="checkbox"/>	
	quarterly	<input type="checkbox"/>	
	semiannual	<input type="checkbox"/>	
	annual	<input checked="" type="checkbox"/>	
	single event	<input type="checkbox"/>	
Two annual events are recommended.			\$500
Good Faith Efforts to Comply			\$0
0.0% Reduction			
Before NOV NOV to EDPRP/Settlement Offer			
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>	
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>	
N/A	<input checked="" type="checkbox"/>	(mark with x)	
Notes	The Respondent does not meet the good faith criteria for this violation.		
Violation Subtotal			\$500
Economic Benefit (EB) for this violation			
Statutory Limit Test			
Estimated EB Amount	\$1,313	Violation Final Penalty Total	\$825
This violation Final Assessed Penalty (adjusted for limits)			\$825

Economic Benefit Worksheet

Respondent: U.S. Department of Agriculture
Case ID No.: 37367
Reg. Ent. Reference No.: RN101228625
Media: Public Water Supply
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$5,000	1-Jan-2007	1-Oct-2010	3.75	\$63	\$1,250	\$1,313
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 necessary to implement an alternate method of disinfection, calculated from the first quarter of non-compliance to the estimated date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$1,313

Table of Running Annual Averages for Drinking Water Contaminants

Respondent	U.S. Department of Agriculture
Case ID No.	37367
Docket No.	2009-0438-PWS-E
Enf. Coordinator	Stephen Thompson

Corresponds to Violation Number:

TTHM

MCL: 0.080 mg/L

Quarter/ Year	1st Quarter of 2007	2nd Quarter of 2007	3rd Quarter of 2007	4th Quarter of 2007	1st Quarter of 2008	2nd Quarter of 2008	3rd Quarter of 2008	4th Quarter of 2008
Running Annual Average (in mg/L)	0.296	0.279	0.264	0.174	0.128	0.110	0.120	0.123

Compliance History Report

Customer/Respondent/Owner-Operator:	CN602297707	U.S. Department of Agriculture	Classification: AVERAGE	Rating: 2.22
Regulated Entity:	RN101228625	USFS ANGELINA DISTRICT	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY WATER LICENSING		REGISTRATION LICENSE	0030103 0030103
Location:	APPROX 3 MILES NE OF ZAVALLA ON HWY 147, ANGELINA COUNTY, TX			
TCEQ Region:	REGION 10 - BEAUMONT			
Date Compliance History Prepared:	March 26, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 26, 2004 to March 26, 2009			

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

Name: Stephen Thompson Phone: (512) 239-2558

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 |
| 6. | |

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgments, 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 | 12/28/2004 | (342851) |
| 2 | 03/17/2006 | (558020) |
| 3 | 06/09/2006 | (558291) |
| 4 | 07/20/2006 | (558299) |
| 5 | 01/02/2007 | (558309) |
| 6 | 01/30/2007 | (558319) |
| 7 | 05/07/2007 | (558793) |
| 8 | 05/18/2007 | (737549) |
| 9 | 08/10/2007 | (737693) |
| 10 | 11/15/2007 | (737696) |
| 11 | 02/08/2008 | (737703) |
| 12 | 04/03/2008 | (737705) |
| 13 | 08/28/2008 | (737708) |
| 14 | 12/05/2008 | (737711) |
| 15 | 01/23/2009 | (737714) |
| 16 | 03/17/2009 | (738385) |

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

Date: 03/17/2006 (558020) CN602297707
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
5A THC Chapter 341, SubChapter A 341.0315(c)
Description: Violated the maximum contaminant level ("MCL") for total trihalomethanes ("TTHM")
during the fourth quarter of 2005.

Date: 06/09/2006 (558291) CN602297707
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
5A THC Chapter 341, SubChapter A 341.0315(c)
Description: Violated the maximum contaminant level for total trihalomethanes during the first quarter
of 2006.

Date: 07/20/2006 (558299) CN602297707
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
5A THC Chapter 341, SubChapter A 341.0315(c)
Description: Violated the maximum contaminant level for Trihalomethanes during the second quarter
of 2006.

Date: 01/02/2007 (558309) CN602297707
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
5A THC Chapter 341, SubChapter A 341.0315(c)
Description: Violated the maximum contaminant level for total trihalomethanes during the third
quarter of 2006.

Date: 01/30/2007 (558319) CN602297707
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
5A THC Chapter 341, SubChapter A 341.0315(c)
Description: Violated the maximum contaminant level for total trihalomethanes during the fourth
quarter of 2006.

Date: 05/18/2007 (737549) CN602297707
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
Description: Violated the maximum contaminant level for trihalomethanes during the first quarter of
2007.

Date: 08/10/2007 (737693) CN602297707
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
Description: Violated the maximum contaminant level for trihalomethanes during the second quarter
of 2007.

Date: 11/15/2007 (737696) CN602297707
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
Description: Violated the maximum contaminant level for trihalomethanes during the third quarter of
2007.

Date: 02/08/2008 (737703) CN602297707
Self Report? -NO Classification: Moderate
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.

Date: 04/03/2008 (737705) CN602297707
Self Report? NO Classification: Moderate
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.

Date: 08/28/2008 (737708) CN602297707
Self Report? NO Classification: Moderate
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.

Date: 12/05/2008 (737711) CN602297707
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
Description: Violated the maximum contaminant level for trihalomethanes during the third

quarter of 2008.

Date: 01/23/2009 (737714)

CN602297707

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)

Description: Violated the maximum contaminant level for trihalomethanes during the fourth 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
U.S. DEPARTMENT OF AGRICULTURE
RN101228625

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

**AGREED ORDER
DOCKET NO. 2009-0438-PWS-E**

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the U.S. Department of Agriculture ("USDA") and its agency, the Forest Service (collectively referred to as "the Respondent") under the authority of 42 U.S.C. § 300j-6 and TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

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

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

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

I. FINDINGS OF FACT

1. The Respondent owns and operates a work center located approximately three miles northeast of Zavalla in Angelina County, Texas (the "Facility") on Highway 147. The Facility has an on-site water well which provides water to the Facility. The Facility has one service connection and has

approximately 45 water outlets (or faucets) which provide water to Respondent's employees who work at the Facility. The Facility has been in operation since 2000.

2. During a record review conducted on March 9, 2009, TCEQ staff documented that the Respondent did not comply with the maximum contaminant level ("MCL") of 0.080 milligrams per liter ("mg/L") for total trihalomethanes ("TTHM"), based on a running annual average for the first quarter of 2007 through the fourth quarter of 2008, as indicated in the table below.

TTHM								
MCL: 0.080 mg/L								
Quarter/ Year	1 st Quarter of 2007	2 nd Quarter of 2007	3 rd Quarter of 2007	4 th Quarter of 2007	1 st Quarter of 2008	2 nd Quarter of 2008	3 rd Quarter of 2008	4 th Quarter of 2008
Running Annual Average (in mg/L)	0.296	0.279	0.264	0.174	0.128	0.110	0.120	0.123

3. The Respondent received notice of the violations on March 13, 2009.
4. The Executive Director acknowledges the provisions of 31 U.S.C. § 1341 and the restrictions contained therein which prohibit an officer or employee of the United States from involving the United States Government in a contract or obligation for the expenditure of money where Congress has not acted to appropriate funds for such purpose.
5. The Executive Director recognizes that the Respondent, in response to this enforcement action, has agreed to take steps to provide water (which is compliant with TCEQ standards) for use by the Respondent's employees at the Facility for drinking, bathing and washing.

II. CONCLUSIONS OF LAW

1. There is a waiver of sovereign immunity in the Safe Drinking Water Act as provided in 42 U.S.C. § 300j-6 and the waiver includes each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government. Therefore, the Commission has jurisdiction to enter this Agreed Order, and the Respondent is subject to the Commission's jurisdiction as provided in 42 U.S.C. § 300j-6 and pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission. Specifically, the USDA is a department of the Government of the United States of America within the executive branch. See 7 U.S.C. § 2201, et seq. The Forest Service is an agency within the USDA.
2. As evidenced by Findings of Fact No. 2, the Respondent failed to comply with the MCL of 0.080 mg/L for TTHM, 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 the Respondent 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.
4. An administrative penalty in the amount of Eight Hundred Twenty-Five Dollars (\$825) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The Respondent has paid the Eight Hundred Twenty-Five Dollar (\$825) administrative penalty.

III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Eight Hundred Twenty-Five Dollars (\$825) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent'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; provided, however, the Commission will not require additional corrective action by or seek additional penalties against the Respondent and will not take enforcement action against the Respondent for the Facility exceeding the MCL based on a running annual average for total TTHM during the following time period or periods: from the first quarter of 2007 to the end of the 48-month period following the effective date of this Agreed Order. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: U.S. Department of Agriculture, Docket No. 2009-0438-PWS-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall undertake the following technical requirements:
 - a. Within 36 months after the effective date of this Agreed Order and subject to the limitations contained in 31 U.S.C. § 1341, the Respondent will have completed construction of an upgrade to the water treatment system to address the MCL for TTHM in the water at the Facility.
 - b. Within 48 months after the effective date of this Agreed Order and subject to the limitations contained in 31 U.S.C. § 1341, the Respondent shall return to compliance

with the running annual average MCL for TTHM at the Facility, in accordance with 30 TEX. ADMIN. CODE § 290.113.

- c. Within 48 months plus 30 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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:

DBP Coordinator
Water Supply Division, 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 the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent 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 the Respondent if the Executive Director determines that the Respondent 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 the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
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 under this Agreed Order.
9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.
10. Notice to the Respondent under this Agreed Order will be provided to:

Forest Supervisor
Forest Service, USDA
415 South First Street, Suite 110
Lufkin, Texas 75901

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John S. Sullivan
For the Executive Director

7/27/2009
Date

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

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

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

Andrew Colarino
Signature

June 8, 2009
Date

Andrew Colarino
Name (Printed or typed)
Authorized Representative of
U.S. Department of Agriculture

Acting Forest Supervisor
Title

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