

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-0579-WOC-E TCEQ ID RN103647335 CASE NO. 37450
RESPONDENT NAME: JOEY P. DEHART

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input checked="" 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 OCCURRED: 2408 W. Highway 90, Alpine, Brewster County

TYPE OF OPERATION: mobile home park drinking water distribution system.

SMALL BUSINESS: Yes No N/A

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 January 4, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Ms. Carlie Konkol, Water Enforcement Section, MC 149, (512) 239-0735

TCEQ Regional Contact: Mr. Kent Waggoner, El Paso Regional Office, MC R-6, (915) 834-4957

Respondent: Mr. Joey P. Dehart, P.O. Box 1351, Alpine, Texas 79831

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: February 3, 2009</p> <p>Date of Field Citation: February 16, 2009</p> <p>Background Facts: The EDPRP was filed on October 9, 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 October 13, 2009. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>This enforcement action was initiated after the Respondent failed to remit payment for Field Citation No. 10307.</p> <p>Current Compliance Status: No outstanding Technical Requirements.</p> <p>WOC: Failed to maintain a valid water operator license prior to performing activities as a water treatment operator [30 TEX. ADMIN. CODE §§ 30.5(a) and 30.381(b), TEX. HEALTH & SAFETY CODE 341.034(b), and TEX. WATER CODE § 37.003].</p>	<p>Total Assessed: \$500</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$500</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: N/A</p> <p>Person Compliance History Classification: N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent was issued a new water operator's license on March 13, 2009.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	6-Apr-2009		
	PCW	16-Sep-2009	Screening	13-Apr-2009
		EPA Due		

RESPONDENT/FACILITY INFORMATION			
Respondent	Joey P. Dehart		
Reg. Ent. Ref. No.	RN103647335		
Facility/Site Region	6-El Paso	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37450	No. of Violations	1
Docket No.	2009-0579-WOC-E	Order Type	1660
Media Program(s)	All Occupational Licenses	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Carlie Konkol
Admin. Penalty \$ Limit Minimum		\$0	Maximum
			\$2,500
		EC's Team	Enforcement Team 3

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 0.0% Enhancement *Subtotals 2, 3, & 7*

Notes

Culpability No 0.0% Enhancement *Subtotal 4*

Notes

Good Faith Effort to Comply Total Adjustments *Subtotal 5*

Economic Benefit 0.0% Enhancement *Subtotal 6*

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

SUM OF SUBTOTALS 1-7 *Final Subtotal*

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% *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

PAYABLE PENALTY

Screening Date 13-Apr-2009

Docket No. 2009-0579-WOC-E

PCW

Respondent Joey P. Dehart

Policy Revision 2 (September 2002)

Case ID No. 37450

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103647335

Media [Statute] All Occupational Licenses

Enf. Coordinator: Carlie Konkol

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)	0	0%
	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) 0%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment is recommended due to no compliance history.

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

Screening Date 13-Apr-2009

Docket No. 2009-0579-WOC-E

PCW

Respondent Joey P. Dehart

Policy Revision 2 (September 2002)

Case ID No. 37450

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103647335

Media [Statute] All Occupational Licenses

Enf. Coordinator Carlie Konkol

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 30.5(a) and 30.381(b), Tex. Water Code § 37.003 and Tex. Health & Safety Code § 341.034(b)

Violation Description Failed to maintain a valid water operator license prior to performing activities as a water treatment operator. Specifically, on the date of the investigation, it was documented that the Respondent was operating the Lines Cactus Grove Mobile Home Park's water system with an expired water operator's license.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 2 38 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$500

Two monthly events are recommended calculated from the February 3, 2009 investigation date to the March 13, 2009 compliance date.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDPRP/Settlement Offer \$0

Extraordinary		
Ordinary		
N/A	X	(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 \$40

Violation Final Penalty Total \$500

This violation Final Assessed Penalty (adjusted for limits) \$500

Economic Benefit Worksheet

Respondent Joey P. Dehart
Case ID No. 37450
Reg. Ent. Reference No. RN103647335
Media All Occupational Licenses
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$600	31-Mar-2008	13-Mar-2009	0.95	\$2	\$38	\$40
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 actual cost includes the amount to attend a course and take an exam in order to obtain a water operator license, calculated from the original water operator license expiration date to the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$600

TOTAL

\$40

Compliance History Report

Customer/Respondent/Owner-Operator:	CN602166068	DEHART, JOEY P	Classification:	Rating:
Regulated Entity:	RN103647335	DEHART, JOEY P	Classification:	Site Rating:
ID Number(s):	ON SITE SEWAGE FACILITY LICENSING	LICENSE		OS0028221
	WATER LICENSING	LICENSE		WO0025464
Location:	1606 WEST HIGHWAY 90, ALPINE, TEXAS 79831			
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	April 08, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 08, 2004 to April 08, 2009			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:				
Name: Carlie Konkol	Phone: (361) 825-3422			

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/operator of the site during the compliance period? | No |
| 3. If Yes, who is the current owner/operator? | N/A |
| 4. If Yes, who was/were the prior owner(s)/operator(s)? | N/A |
| 5. When did the change(s) in owner or operator occur? | N/A |
| 6. | |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 03/30/2009 (735537)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
- 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
JOEY P. DEHART;
RN103647335

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2009-0579-WOC-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. WATER CODE chs. 7 and 37, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Joey P. Dehart ("Mr. Dehart").

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

FINDINGS OF FACT

1. Mr. Dehart operates a purchased drinking water distribution system located at Lines Cactus Grove Mobile Home Park, 2408 W. Highway 90 in Alpine, Brewster County, Texas (the "Facility").
2. TCEQ has general authority to regulate the licensing of water treatment operators, pursuant to TEX. WATER CODE ch. 37.
3. During an investigation conducted on February 3, 2009, a TCEQ El Paso Regional Office investigator documented that Mr. Dehart failed to maintain a valid water operator license prior to performing activities as a water treatment operator. Specifically, on the date of the investigation, it was documented that Mr. Dehart was operating the Lines Cactus Grove Mobile Home Park's water system with an expired water operator's license.
4. Mr. Dehart received notice of the violation on or about February 21, 2009.
5. The Executive Director recognizes that Mr. Dehart was issued a new water operator's license (WO0025464) on March 13, 2009.

6. 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 Joey P. Dehart" was filed in the TCEQ Chief Clerk's office on October 9, 2009.
7. By letter dated October 9, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Dehart with notice of the EDPRP. According to the return receipt "green card," Mr. Dehart received notice of the EDPRP on October 13, 2009, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Mr. Dehart received notice of the EDPRP, provided by the Executive Director. Mr. Dehart 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, Mr. Dehart is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 37, TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Dehart failed to maintain a valid water operator license prior to performing activities as a water treatment operator, in violation of 30 TEX. ADMIN. CODE §§ 30.5(a) and 30.381(b), TEX. HEALTH & SAFETY CODE § 341.034(b), and TEX. WATER CODE § 37.003.
3. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director timely served Mr. Dehart with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 8, Mr. Dehart failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Dehart and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Dehart 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.

6. An administrative penalty in the amount of five hundred dollars (\$500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. 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. Mr. Dehart is assessed an administrative penalty in the amount of five hundred dollars (\$500.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Dehart'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: Joey P. Dehart; Docket No. 2009-0579-WOC-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. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Mr. Dehart. Mr. Dehart is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
4. If Mr. Dehart fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Dehart's failure to comply is not a violation of this Order. Mr. Dehart shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Dehart shall notify the Executive Director within seven days after

Mr. Dehart becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

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 Mr. Dehart shall be made in writing to the Executive Director. Extensions are not effective until Mr. Dehart 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 Mr. Dehart if the Executive Director determines that Mr. Dehart 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.

Joey P. Dehart
Docket No. 2009-0579-WOC-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF KARI L. GILBRETH

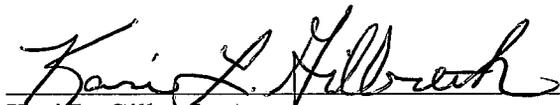
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Kari L. Gilbreth. 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, 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 Joey P. Dehart (the “EDPRP”) was filed with the Office of the Chief Clerk on October 9, 2009.

The EDPRP was mailed to Mr. Dehart at his last known address on October 9, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Dehart received notice of the EDPRP on October 13, 2009, as evidenced by the signature on the card.

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


Kari L. Gilbreth, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Kari L. Gilbreth, 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 16th day of November, A.D., 2009.




Notary Signature