

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO. 2010-0506-PWS-E RN104814447 CASE NO. 39423**

**RESPONDENT NAME: FELIPE POSADA DBA KEY ROAD SUBDIVISION WATER SUPPLY**

<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

**SITE WHERE VIOLATION(S) OCCURRED:** 4091 Key Road, Bloomington, Victoria County

**TYPE OF OPERATION:** public water system

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired September 20, 2010. No comments were received.

**CONTACTS AND MAILING LIST:**  
**TCEQ Attorney:** Ms. Anna M. Treadwell, Litigation Division, MC 175, (512) 239-3400  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400  
**TCEQ Enforcement Coordinator:** Mr. Epifanio Villarreal, Water Enforcement Section, MC R-14, (361) 825-3425  
**TCEQ Regional Contact:** Mr. David Kennebeck, Corpus Christi Regional Office, MC R-14, (361) 825-3100  
**Respondent:** Mr. Felipe Posada, P.O. Box 162, Bloomington, Texas 77951  
**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

**RESPONDENT NAME: FELIPE POSADA DBA  
KEY ROAD SUBDIVISION WATER SUPPLY  
DOCKET NO. 2010-0506-PWS-E**

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> None</p> <p><b>Date of Investigation Relating to this Case:</b> February 25 through March 1, 2010</p> <p><b>Date of NOE Relating to this Case:</b> March 1, 2010</p> <p><b>Background Facts:</b> The EDRP was filed on June 11, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDRP sent by certified mail as "unclaimed." The first class mail has not been returned. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p><b>PWS:</b> Failed to mail or directly deliver one copy of the Consumer Confidence Report ("CCR") to each bill paying customer by July 1 of each year and failed to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the Facility and that the information in the CCR is correct and consistent with compliance monitoring data [30 TEX. ADMIN. CODE §§ 290.271(b) and 290.274(a) and (c)].</p>	<p><b>Total Assessed:</b> \$727</p> <p><b>Total Deferred:</b> \$0  <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> \$727</p> <p>This is a Default Order. 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><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></p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 30 days, mail or directly deliver one copy of the CCR, prepared using the compliance monitoring data for the year 2009, to each bill paying customer and make a good faith effort to deliver the CCR to non-bill paying customers;</li> <li>2. Within 45 days, submit to the Commission a copy of the CCR provided to customers of the Facility for the year 2009 and the certification that the CCR has been distributed to the customers of the Facility and that the information in the CCR is correct and consistent with compliance monitoring data; and</li> <li>3. Within 60 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	29-Mar-2010	<b>Screening</b>	30-Mar-2010	<b>EPA Due</b>	1-Jul-2007
	<b>PCW</b>	30-Mar-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Felipe Posada DBA Key Road Subdivision Water Supply
<b>Reg. Ent. Ref. No.</b>	RN104814447
<b>Facility/Site Region</b>	14-Corpus Christi
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>				
<b>Enf./Case ID No.</b>	39423	<b>No. of Violations</b>	1	
<b>Docket No.</b>	2010-0506-PWS-E	<b>Order Type</b>	Findings	
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	No	
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Epifanio Villarreal	
		<b>EC's Team</b>	Enforcement Team 2	
<b>Admin. Penalty \$ Limit</b>	<b>Minimum</b>	\$50	<b>Maximum</b>	\$1,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$300</b>
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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.

<b>Compliance History</b>	76.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$228</b>
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Notes: The penalty enhancement is due to three prior Notices of Violation ("NOVs") containing violations that are the same as the violations in the current enforcement action, 18 prior dissimilar NOVs, and one prior default enforcement order without a denial of liability.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts \$199  
 Approx. Cost of Compliance \$174  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$528</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	37.7%	<b>Adjustment</b>	<b>\$199</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement recommended for recovery of avoided costs of compliance.

<b>Final Penalty Amount</b>	<b>\$727</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$727</b>
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	<b>\$0</b>
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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.

<b>PAYABLE PENALTY</b>	<b>\$727</b>
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**Screening Date** 30-Mar-2010

**Docket No.** 2010-0506-PWS-E

**PCW**

**Respondent** Felipe Posada DBA Key Road Subdivision Water Supply

Policy Revision 2 (September 2002)

**Case ID No.** 39423

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN104814447

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Epifanio Villarreal

### Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	3	15%
	Other written NOVs	18	36%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 76%

>> **Repeat Violator (Subtotal 3)**

N/A

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

N/A

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

The penalty enhancement is due to three prior Notices of Violation ("NOVs") containing violations that are the same as the violations in the current enforcement action, 18 prior dissimilar NOVs, and one prior default enforcement order without a denial of liability.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 76%

Screening Date 30-Mar-2010

Docket No. 2010-0506-PWS-E

PCW

Respondent Felipe Posada DBA Key Road Subdivision Water Supply

Policy Revision 2 (September 2002)

Case ID No. 39423

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104814447

Media [Statute] Public Water Supply

Enf. Coordinator Epifanio Villarreal

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.271(b) and 290.274(a) and (c)

Violation Description Failed to mail or directly deliver one copy of the Consumer Confidence Report ("CCR") to each bill paying customer by July 1 of each year and failed to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the Facility and that the information in the CCR is correct and consistent with compliance monitoring data. Specifically, the Respondent did not mail or directly deliver the CCRs to the Facility's customers nor did the Respondent submit the CCR or the required certification to the TCEQ for the years 2006 through 2008.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%

Matrix Notes 100% of the rule requirements were not met.

Adjustment \$900

\$100

Violation Events

Number of Violation Events 3 Number of violation days 731

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

mark only one with an x

Violation Base Penalty \$300

Three annual events are recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

	Reduction	
	Before NOV	NOV to EDPRP/Settlement
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$300

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$199

Violation Final Penalty Total \$727

This violation Final Assessed Penalty (adjusted for limits) \$727

## Economic Benefit Worksheet

**Respondent** Felipe Posada DBA Key Road Subdivision Water Supply  
**Case ID No.** 39423  
**Reg. Ent. Reference No.** RN104814447  
**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

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]	\$174	1-Jul-2007	1-Jul-2009	2.92	\$25	\$174	\$199
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided costs include the estimated amount necessary to produce copies of the CCR and mail or directly deliver the reports to customers of the Facility, calculated for the years in which no reports were distributed.

Approx. Cost of Compliance

\$174

**TOTAL**

\$199

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN602960692	POSADA, FELIPE	Classification:	Rating:
Regulated Entity:	RN104814447	KEY ROAD SUBDIVISION WATER SUPPLY	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY		REGISTRATION	2350055
Location:	4091 KEY ROAD BLOOMINGTON, VICTORIA COUNTY TEXAS			
TCEQ Region:	REGION 14 - CORPUS CHRISTI			
Date Compliance History Prepared:	March 30, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	March 30, 2005 to March 30, 2010			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:				
Name:	<u>Epi Villarreal</u>	Phone:	<u>361-825-3425</u>	

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
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

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
- |  |  |
|--|--|
| <p><b>Effective Date: 07/09/2008</b></p> <p>Classification: Moderate</p> <p>Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)<br/>30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)<br/>5A THC Chapter 341, SubChapter A 341.033(d)</p> <p>Description: Failure to submit samples for microbiological analyses as required by 30 Tex. Admin. Code Chapter 290 subchapter F.</p> <p>Classification: Moderate</p> <p>Citation: 30 TAC Chapter 290, SubChapter D 290.46(e)<br/>5A THC Chapter 341, SubChapter A 341.033(a)</p> <p>Description: Failure to employ an operator who holds a class "D" or higher license, for purchase water systems serving no more than 250 connections.</p> <p>Classification: Moderate</p> <p>Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)</p> <p>Description: Failure to maintain records of operation including the amt. of chemicals used weekly, amt. of water treated weekly, complaints rec., dates dead-ends flushed, date storage tanks or other facilities are cleaned, maint. records, and daily/monthly sum. of work performed and the number of hours worked by part time operators</p> <p>Classification: Moderate</p> <p>Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)</p> <p>Description: Failure to maintain an up-to-date chemical and microbiological monitoring plan.</p> <p>Classification: Moderate</p> <p>Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(5)(A)</p> <p>Description: Failure to monitor the disinfectant residual (free chlorine residual) at representative locations in the distribution system at least once every seven days.</p> | <p><b>ADMINORDER 2006-1698-PWS-E</b></p> |
|--|--|
- 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  | 06/23/2006 | (483698) | 16 | 07/15/2007 | (645359) |
| 2  | 09/08/2006 | (511514) | 17 | 08/01/2007 | (645473) |
| 3  | 10/25/2006 | (538157) | 18 | 08/15/2007 | (645681) |
| 4  | 11/21/2006 | (539244) | 19 | 09/01/2007 | (645805) |
| 5  | 12/21/2006 | (539258) | 20 | 10/01/2007 | (645990) |
| 6  | 01/26/2007 | (539271) | 21 | 11/01/2007 | (646136) |
| 7  | 02/15/2007 | (644189) | 22 | 12/15/2007 | (645135) |
| 8  | 02/21/2007 | (540643) | 23 | 02/20/2008 | (792501) |
| 9  | 03/05/2007 | (542437) | 24 | 04/10/2008 | (670413) |
| 10 | 03/15/2007 | (644326) | 25 | 04/25/2008 | (680959) |
| 11 | 04/15/2007 | (644493) | 26 | 06/03/2008 | (681932) |
| 12 | 05/01/2007 | (644580) | 27 | 04/30/2009 | (742994) |
| 13 | 05/15/2007 | (644714) | 28 | 03/08/2010 | (794456) |
| 14 | 06/01/2007 | (644827) | 29 | 03/08/2010 | (794470) |
| 15 | 06/15/2007 | (644974) | 30 | 03/25/2010 | (794961) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |   |   |          |                          |  |
|---|---|----------|--------------------------|--|
| 1 | Date: 02/24/2006  | (455309) | CN602960692              |  |
|   | Self Report? NO   |          | Classification: Minor    |  |
|   | Citation: 30 TAC Chapter 290, SubChapter D 290.45(f)(1)   |          |                          |  |
|   | Description: Failure to secure a written contract, a signed document of specific terms, or a memorandum or letter of understanding between the purchaser and wholesaler which authorizes the purchase of water. |          |                          |  |
|   | Self Report? NO   |          | Classification: Moderate |  |
|   | Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)<br>30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)<br>5A THC Chapter 341, SubChapter A 341.033(d)  |          |                          |  |

Description: Failure to submit samples for microbiological analyses as required by 30 Tex. Admin. Code Chapter 290 subchapter F.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(e)  
5A THC Chapter 341, SubChapter A 341.033(a)

Description: Failure to employ an operator who holds a class "D" or higher license, for purchase water systems serving no more than 250 connections.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)

Description: Failure to maintain records of operation including the amt. of chemicals used weekly, amt. of water treated weekly, complaints rec., dates dead-ends flushed, date storage tanks or other facilities are cleaned, maint. records, and daily/monthly sum. of work performed and the number of hours worked by part time operators  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)

Description: Failure to maintain an up-to-date chemical and microbiological monitoring plan.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(5)(A)  
Description: Failure to monitor the disinfectant residual (free chlorine residual) at representative locations in the distribution system at least once every seven days.

2 Date: 10/25/2006 (538157) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
5A THC Chapter 341, SubChapter A 341.033(d)  
Description: Failure to collect any routine monitoring sample(s) for 09/2006.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
5A THC Chapter 341, SubChapter A 341.033(d)  
Description: Failure to post PN for not collecting any routine monitoring sample(s) in 09/2006.

3 Date: 11/21/2006 (539244) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
5A THC Chapter 341, SubChapter A 341.033(d)  
Description: Failure to collect any routine monitoring sample(s) for 10/2006.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
5A THC Chapter 341, SubChapter A 341.033(d)  
Description: Failure to post PN for not collecting any routine monitoring sample(s) in 10/2006.

4 Date: 12/21/2006 (539258) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
5A THC Chapter 341, SubChapter A 341.001(1)  
Description: Failure to collect any routine monitoring sample(s) for 11/2006.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: Failure to post PN for not collecting any routine monitoring sample(s) in 11/2006.

5 Date: 01/26/2007 (539271) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
5A THC Chapter 341, SubChapter A 341.033(d)  
Description: Failure to collect any routine monitoring sample(s) for 12/2006.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: Failure to post PN for not collecting any routine monitoring sample(s) in 12/2006.

6 Date: 02/21/2007 (540643) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
5A THC Chapter 341, SubChapter A 341.033(d)  
Description: Failure to collect any routine monitoring sample(s) for 01/2007.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: Failure to post PN for not collecting any routine monitoring sample(s) in 01/2007.

7 Date: 03/15/2007 (644326) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
Description: Bact Monitoring Violation 02/2007 Failure to collect a routine monitoring sample in 02/2007.

8 Date: 04/15/2007 (644493) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
Description: Bact Monitoring Violation 03/2007 Failure to collect a routine monitoring sample in 03/2007.

9 Date: 05/15/2007 (644714) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
Description: Bact Monitoring Violation 04/2007 Failure to collect a routine monitoring sample in 04/2007.

10 Date: 06/01/2007 (644827) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: Bact Public Notice (PN) Monitoring Violation 02/2007 Failure to post pn for not collecting a routine monitoring sample in 02/2007.

11 Date: 06/15/2007 (644974) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
Description: Bact Monitoring Violation 05/2007 Failure to collect a routine monitoring sample in 05/2007.

12 Date: 07/15/2007 (645359) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
Description: Bact Monitoring Violation 06/2007 Failure to collect a routine monitoring sample in 06/2007.

13 Date: 08/01/2007 (645473) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: Bact Public Notice (PN) Monitoring Violation 04/2007 Failure to post pn for not collecting a routine monitoring sample in 04/2007.

14 Date: 08/15/2007 (645681) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
Description: Bact Monitoring Violation 07/2007 Failure to collect a routine monitoring sample in 07/2007.

15 Date: 09/01/2007 (645805) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: Bact Public Notice (PN) Monitoring Violation 05/2007 Failure to post pn for not collecting a routine monitoring sample in 05/2007.

16 Date: 10/01/2007 (645990) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: Bact Public Notice (PN) Monitoring Violation 06/2007 Failure to post pn for not collecting a routine monitoring sample in 06/2007.

17 Date: 11/01/2007 (646136) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: Bact Public Notice (PN) Monitoring Violation 07/2007 Failure to post pn for not collecting a routine monitoring sample in 07/2007.

18 Date: 12/15/2007 (645135) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: Bact Public Notice (PN) Monitoring Violation 03/2007 Failure to post pn for not collecting a routine monitoring sample in 03/2007.

19 Date: 02/20/2008 (792501) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter H 290.271(b)  
30 TAC Chapter 290, SubChapter H 290.274(a)  
Description: This system did not deliver the annual Consumer Confidence Report (CCR) for 2006 to its bill-paying customers.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter H 290.274(c)  
Description: This system failed to deliver a copy and certification of delivery of the annual Consumer Confidence Report (CCR) for the 2006 CCR year to the TCEQ.

20 Date: 01/14/2009 (794456) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter H 290.271(b)  
30 TAC Chapter 290, SubChapter H 290.274(a)  
Description: This system did not deliver the annual Consumer Confidence Report (CCR) for 2007 to its bill-paying customers.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter H 290.274(c)  
Description: This system failed to deliver a copy and certification of delivery of the annual Consumer Confidence Report (CCR) for the 2007 CCR year to TCEQ.

21 Date: 11/03/2009 (794470) CN602960692  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter H 290.271(b)  
30 TAC Chapter 290, SubChapter H 290.274(a)  
Description: This system did not deliver the annual Consumer Confidence Report (CCR) for 2008 to its bill-paying customers.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter H 290.274(c)  
Description: This system failed to deliver a copy and certification of delivery of the annual Consumer Confidence Report (CCR) for the 2008 CCR year to TCEQ.

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  
FELIPE POSADA DBA KEY ROAD  
SUBDIVISION WATER SUPPLY;  
RN104814447**

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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER  
DOCKET NO. 2010-0506-PWS-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, (“Commission” or “TCEQ”) considered the Executive Director’s Preliminary Report and Petition filed pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Felipe Posada DBA Key Road Subdivision Water Supply (“Mr. Posada”).

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

**FINDINGS OF FACT**

1. Mr. Posada owns and operates a public water system located at 4091 Key Road, Bloomington, Victoria County, Texas (the “Facility”).
2. The Facility provides water for human consumption, has 16 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(66).
3. During an investigation conducted on February 25 through March 1, 2010, TCEQ Central Office staff documented that Mr. Posada failed to mail or directly deliver one copy of the Consumer Confidence Report (“CCR”) to each bill paying customer by July 1 of each year and failed to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the Facility and that the information in the CCR is correct and consistent with compliance monitoring data. Specifically, Mr. Posada did not mail or directly deliver the CCRs to the Facility’s customers nor did Mr. Posada submit the CCR or the required certification to the TCEQ for the years 2006 through 2008.
4. Mr. Posada received notice of the violation on or about March 6, 2010.

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 Felipe Posada DBA Key Road Subdivision Water Supply” (the “EDPRP”) in the TCEQ Chief Clerk’s office on June 11, 2010.
6. By letter dated June 11, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Posada with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Posada received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. Posada received notice of the EDPRP, provided by the Executive Director. Mr. Posada 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 Findings of Fact Nos. 1 and 2, Mr. Posada is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Posada failed to mail or directly deliver one copy of the CCR to each bill paying customer by July 1 of each year and failed to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the Facility and that the information in the CCR is correct and consistent with compliance monitoring data, in violation of 30 TEX. ADMIN. CODE §§ 290.271(b) and 290.274(a) and (c).
3. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Mr. Posada with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 7, Mr. Posada failed to file a timely answer 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 Mr. Posada and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Mr. Posada for violations of the Texas Health and Safety Code within the Commission’s jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of seven hundred twenty-seven dollars (\$727.00) 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.
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. Posada is assessed an administrative penalty in the amount of seven hundred twenty-seven dollars (\$727.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Posada'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: Felipe Posada DBA Key Road Subdivision Water Supply; Docket No. 2010-0506-PWS-E" to:

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

2. Mr. Posada shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order, Mr. Posada shall mail or directly deliver one copy of the CCR prepared using the compliance monitoring data for the year 2009 to each bill paying customer and make a good faith effort to deliver the CCR to non-bill paying customers, as required by 30 TEX. ADMIN. CODE § 290.274;
  - b. Within 45 days after the effective date of this Order, Mr. Posada shall submit to the Commission a copy of the CCR provided to customers of the Facility for the year 2009 and the certification that the CCR has been distributed to the customers of the

Facility and that the information in the CCR is correct and consistent with compliance monitoring data, as required by 30 TEX. ADMIN. CODE § 290.274. The copy of the CCR and certification shall be mailed to:

Public Drinking Water Section  
Water Supply Division, MC 155  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- c. Within 60 days after the effective date of this Order, Mr. Posada shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

“I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

Mr. Posada shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

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

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

**Felipe Posada DBA Key Road Subdivision Water Supply**  
**Docket No. 2010-0506-PWS-E**  
**Page 6**

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF ANNA M. TREADWELL**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Anna M. Treadwell. 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 Felipe Posada DBA Key Road Subdivision Water Supply” (the “EDPRP”) was filed with the Office of the Chief Clerk on June 11, 2010.

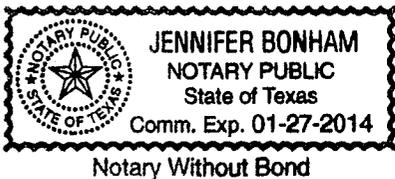
The EDPRP was mailed to Mr. Posada at his last known address on June 11, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Posada received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

*Anna Treadwell*  
\_\_\_\_\_  
Anna M. Treadwell, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Anna M. Treadwell, 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 23 day of July, A.D., 2010.



*Jennifer Bonham*  
\_\_\_\_\_  
Notary Signature