

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2009-1585-PWS-E **TCEQ ID:** RN101175560 **CASE NO.:** 38449  
**RESPONDENT NAME:** Westwood Shores Municipal Utility District

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Westwood Shores MUD, located approximately two miles south of Trinity on Farm-to-Market Road 356, Trinity County</p> <p><b>TYPE OF OPERATION:</b> Public water supply</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 28, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> 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  <b>Respondent:</b> Mr. Howard T. Starling, Board President, Westwood Shores Municipal Utility District, P.O. Box 1768, Trinity, Texas 75862  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> September 1, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> September 20, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a record review.</p> <p><b>WATER</b></p> <p>Failure to provide a purchase water contract that authorizes a maximum daily purchase rate of 0.6 gallons per minute ("gpm") per connection [30 TEX. ADMIN. CODE § 290.45(f)(4)].</p>	<p><b>Total Assessed:</b> \$305</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$305</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Orders Justification:</b> The Respondent has three repeated enforcement actions over the prior five year period for the same violation.</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 180 days after the effective date of this Agreed Order, and continuing on a semiannual basis thereafter, provide a progress report to the Commission that includes information regarding the actions taken to achieve compliance with Ordering Provision b;</p> <p>b. Within 450 days after the effective date of this Agreed Order, provide a total production capacity of 0.6 gpm per connection; and</p> <p>c. Within 465 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 2280016



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	21-Sep-2009	<b>Screening</b>	28-Sep-2009	<b>EPA Due</b>	
	<b>PCW</b>	29-Sep-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Westwood Shores Municipal Utility District		
<b>Reg. Ent. Ref. No.</b>	RN101176560		
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	38449	<b>No. of Violations</b>	1
<b>Docket No.</b>	2009-1685-PWS-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Stephen Thompson
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit 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>	\$250
---	-------------------	-------

### 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>	22.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$55
---------------------------	-------------------	--------------------------------	------

**Notes**  
Enhancement is due to four Notices of Violation ("NOVs") that contain the same or similar violations as those contained in the current enforcement action and one dissimilar NOV.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
--------------------	----	------------------	-------------------	-----

**Notes**  
The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
--	-------------------	-----

<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts	\$314,137
Approx. Cost of Compliance	\$3,000,000

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$305
-----------------------------	-----------------------	-------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount** \$305

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$305
-----------------------------------	-------------------------------	-------

<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
-----------------	----------------	-------------------	-----

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>	\$305
------------------------	-------

Screening Date 28-Sep-2009

Docket No. 2009-1585-PWS-E

PCW

Respondent Westwood Shores Municipal Utility District

Policy Revision 2 (September 2002)

Case ID No. 38449

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101175560

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)	4	20%
	Other written NOVs	1	2%
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%
Please Enter Yes or No			
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) 22%

>> 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 four Notices of Violation ("NOVs") that contain the same or similar violations as those contained in the current enforcement action and one dissimilar NOV.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 22%

Screening Date 28-Sep-2009

Docket No. 2009-1585-PWS-E

PCW

Respondent Westwood Shores Municipal Utility District

Policy Revision 2 (September 2002)

Case ID No. 38449

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101175560

Media [Statute] Public Water Supply

Enf. Coordinator: Stephen Thompson

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 290.45(f)(4)

Violation Description

Failed to provide a purchase water contract that authorizes a maximum daily purchase rate of 0.6 gallons per minute ("gpm") per connection. Specifically, at the time of the record review, it was noted that the Facility serves 840 connections and is required to have a contract that authorizes a purchase rate of 504 gpm. However, the Respondent's purchase water contract authorizes the purchase of 104 gpm, which is a 79% deficiency.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	X			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Without a sufficient water contract that authorizes enough production capacity, the Facility may experience water outages and backflow problems exposing customers to a significant amount of contaminants that exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1 Number of violation days 27

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$250

One monthly event is recommended, calculated from the date of the record review, September 1, 2009, to the date of screening, September 28, 2009.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EOPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$314,137

Violation Final Penalty Total \$305

This violation Final Assessed Penalty (adjusted for limits) \$305

## Economic Benefit Worksheet

**Respondent:** Westwood Shores Municipal Utility District  
**Case ID No.:** 38449  
**Reg. Ent. Reference No.:** RN101175560  
**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)				0.00	\$0	\$0	\$0
Engineering/construction	\$3,000,000	1-Sep-2009	1-Mar-2011	1.50	\$14,959	\$299,178	\$314,137
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 includes the estimated amount to construct a new surface water treatment facility so that the required production capacity can be achieved. Calculated from the date of record review 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

\$3,000,000

TOTAL

\$314,137

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600623631 Westwood Shores Municipal Utility District Classification: AVERAGE Rating: 2.03  
Regulated Entity: RN101175560 WESTWOOD SHORES MUD Classification: Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2280016  
WATER LICENSING LICENSE 2280016  
Location: TWO MILES SOUTH OF TRINITY ON FM 356, TRINITY COUNTY , TX

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: September 25, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 25, 2004 to September 25, 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/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 judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 12/28/2004 | (342627) |
| 2 | 08/14/2006 | (488173) |
| 3 | 08/29/2006 | (489045) |
| 4 | 02/21/2007 | (540238) |
| 5 | 11/02/2007 | (595037) |
| 6 | 09/05/2008 | (688763) |
| 7 | 09/18/2009 | (741070) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 12/27/2004 (342627)

CN600623631

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.42(l)

Description: Failure to maintain an up-to-date plant operations manual.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(1)

Description: Failure to calibrate treated water meter within last 12 months.  
Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.45(f)(4)

Description: Failure to provide a purchase water contract that authorizes a maximum daily purchase rate of 0.6 gallon per minute per connection.

Date: 08/30/2006 (489045) CN600623631

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.45(f)(4)

Description: Failure to meet TCEQ "Minimum Water System Capacity Requirements".  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(e)(3)

Description: Failure to employ at least one operator who holds a Class "B" or higher surface water license.

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.45(f)(4)

Description: Failure to meet TCEQ "Minimum Water System Capacity Requirements".  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.42(l)

Description: Failure to maintain an up-to-date plant operations manual.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(1)

Description: Failure to calibrate treated water meter within last 12 months.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.45(f)(4)

Description: Failure to provide a purchase water contract that authorizes a maximum daily purchase rate of 0.6 gallon per minute per connection.

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.42(m)

Description: Failure to maintain fence at the surface water plant.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(2)

Description: Failure to lock roof hatch for the 0.5 MG storage tank.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.44(h)(1)(A)

Description: Failure to have a backflow prevention device for the marina within the Westwood Shores subdivision.

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.44(h)(4)

Description: Failure to have two backflow prevention devices, tested annual by a recognized backflow prevention assembly tester.

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(l)

Description: Failure to flush all dead end mains at least once a month.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.110(b)(4)

Description: Failure to adequately chlorinate the water.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(B)(iii)

Description: Failure to provide the last 3 months of chlorine residual records.

Date: 02/21/2007 (540238) CN600623631

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.45(f)(4)

Description: Failure to provide a purchase water contract that authorizes a maximum daily purchase rate of 0.6 gallon per minute per connection.

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(l)

Description: Failure to flush all dead end mains at least once a month.

Date: 09/08/2008 (688763)

CN600623631

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.45(f)(4)

Description: Failure to provide a purchase water contract that authorizes a maximum daily purchase rate of 0.6 gallon per minute per connection.

Date: 08/04/2009 (761110)

CN600623631

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(q)(1)

Description: Failure to issue a boil water notification using the prescribed notification format.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(p)(2)

Description: Failure to provide the executive director with a written list of all the operators and operating companies that the public water system employs.

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 WESTWOOD SHORES  
MUNICIPAL UTILITY DISTRICT  
RN101175560**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2009-1585-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 Westwood Shores Municipal Utility District ("the Respondent") under the authority of 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 public water supply approximately two miles south of Trinity on Farm-to-Market Road 356 in Trinity County, Texas (the "Facility") that has approximately 840 service connections and serves at least 25 people per day for at least 60 days per year.

2. During a record review conducted on September 1, 2009, TCEQ staff documented that the Respondent did not provide a purchase water contract that authorizes a maximum daily purchase rate of 0.6 gallons per minute ("gpm") per connection. Specifically, at the time of the record review, it was noted that the Facility serves 840 connections and is required to have a contract that authorizes a purchase rate of 504 gpm. However, the Respondent's purchase water contract authorizes the purchase of 104 gpm, which is a 79% deficiency.
3. The Respondent received notice of the violations on September 25, 2009.

## **II. CONCLUSIONS OF LAW**

1. The Respondent 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 Findings of Fact No. 2, the Respondent failed to provide a purchase water contract that authorizes a maximum daily purchase rate of 0.6 gpm per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(f)(4).
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 Three Hundred Five Dollars (\$305) 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 Three Hundred Five Dollar (\$305) 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 Three Hundred Five Dollars (\$305) 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. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Westwood Shores Municipal Utility District, Docket No. 2009-1585-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 180 days after the effective date of this Agreed Order, and continuing on a semiannual basis thereafter, provide a progress report to the Commission that includes information regarding the actions taken to achieve compliance with Ordering Provision No. 2.b;
  - b. Within 450 days after the effective date of this Agreed Order, provide a total production capacity of 0.6 gpm per connection, in accordance with 30 TEX. ADMIN. CODE § 290.45; and
  - c. Within 465 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 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 fines 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:

Water Section Manager  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1892

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.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

John Soderlin  
For the Executive Director

12/11/2009  
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Westwood Shores Municipal Utility District. I am authorized to agree to the attached Agreed Order on behalf of Westwood Shores Municipal Utility District, 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, Westwood Shores Municipal Utility District 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.

Howard I. Starling  
Signature

10-19-09  
Date

Howard I. Starling  
Name (Printed or typed)  
Authorized Representative of  
Westwood Shores Municipal Utility District

President of Board  
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.

