EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1633-WOC-E TCEQ ID RN103500948 CASE NO. 38459
RESPONDENT NAME: GREGORY L. POPKO

ORDER TYPE:		
__1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
X FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	X OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION OCCURRED: Hanson Pipe & Precast, Inc., 1003 North MacArthur Boulevard, Grand Prairie, Dallas County

TYPE OF OPERATION: Public water system.

SMALL BUSINESS: __X__ 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 the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired March 1, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
TCEQ Enforcement Coordinator: Ms. Rebecca Clausewitz, Water Enforcement Section, MC R-13, (210) 403-4012
TCEQ Regional Contact: Mr. Sid Slocum, Dallas/Fort Worth Regional Office, MC R-4, (817) 588-5901
Respondent: Mr. Gregory L. Popko, 3124 Concord Drive, Mesquite, Texas 75150
Respondent's Attorney: Not represented by counsel on this enforcement matter.

RESPONDENT NAME: GREGORY L. POPKO
DOCKET NO.: 2009-1633-WOC-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint ___ Routine ___ Enforcement Follow-up _X_ Records Review **Date of Complaint Relating to this Case**: None **Dates of Investigation Relating to this Case**: January 22, 2008 (field citation) September 8, 2009 (record review) **Dates of NOEs Relating to this Case**: January 23, 2008 (field citation) September 8, 2009 (NOE) **Background Facts**: On January 23, 2008, Respondent was issued Field Citation no. 00236 for operating the Facility without possessing the required Class "D" Water Operator license. After several failed attempts by TCEQ staff to obtain Respondent's signature on the Field Citation so the matter could be resolved, the case was referred to the Enforcement Division on September 8, 2009. The EDPRP was filed on October 28, 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 29, 2009. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference. **Current Compliance Status:** No outstanding Technical Requirements. **WOC:** Failed to maintain a valid, effective public water system operator license issued by the Commission prior to performing process control duties for the production and distribution of drinking water [30 TEX. ADMIN. CODE §§ 30.5(a) and 30.381(b), TEX. WATER CODE § 37.003, and TEX. HEALTH & SAFETY CODE § 341.034(b)].	**Total Assessed**: $376 **Total Deferred**: $0 ___ Expedited Order ___ Financial Inability to Pay ___ SEP Conditional Offset **Total Paid/Due to General Revenue**: $210/$166 A portion of the assessed penalty was paid by the owner of the Facility. Respondent will be required to remit the remaining $166 under the terms of this Order. **Site Compliance History Classification:** N/A **Person Compliance History Classification:** N/A **Major Source**: ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Action Taken:** The Executive Director recognizes that the Respondent ceased operating the Facility on or about February 1, 2008.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) *PCW Revision October 30, 2008*

TCEQ

DATES					
Assigned	8-Sep-2009				
PCW	29-Sep-2009	Screening	28-Sep-2009	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Gregory L. Popko		
Reg. Ent. Ref. No.	RN103500948		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	38459	No. of Violations	1
Docket No.	2009-1633-WOC-E	Order Type	1660
Media Program(s)	All Occupational Licenses	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rebecca Clausewitz
		EC's Team	Enforcement Team 2

Admin. Penalty $ Limit Minimum $0 **Maximum** $2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **$250**

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* **$0**

Notes: No adjustment is recommended due to compliance history.

Culpability No **0.0%** Enhancement *Subtotal 4* **$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments *Subtotal 5* **$0**

Economic Benefit **0.0%** Enhancement* *Subtotal 6* **$0**

Total EB Amounts $126
Approx. Cost of Compliance $111

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* **$250**

OTHER FACTORS AS JUSTICE MAY REQUIRE **50.4%** *Adjustment* **$126**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: The enhancement is to recover the avoided costs of compliance.

Final Penalty Amount **$376**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **$376**

DEFERRAL **0.0%** Reduction *Adjustment* **$0**

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral not offered with non-expedited cases.

PAYABLE PENALTY **$376**

Screening Date	28-Sep-2009	**Docket No.**	2009-1633-WOC-E	**PCW**
Respondent	Gregory L. Popko			*Policy Revision 2 (September 2002)*
Case ID No.	38459			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN103500948			
Media [Statute]	All Occupational Licenses			
Enf. Coordinator	Rebecca Clausewitz			

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%
		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) 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 compliance history.

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

Screening Date	28-Sep-2009	**Docket No.**	2009-1633-WOC-E	**PCW**
Respondent	Gregory L. Popko			*Policy Revision 2 (September 2002)*
Case ID No.	38459			*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN103500948			
Media [Statute]	All Occupational Licenses			
Enf. Coordinator	Rebecca Clausewitz			

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, effective public water system operator license issued by the Commission prior to performing process control duties for the production and distribution of drinking water. Specifically, on the date of the investigation, the Respondent was operating the water system at Hanson Pipe & Precast, Inc. without the required operator license. The water system is required to be operated under the direct supervision of an operator with a valid Class "D" license, however the Respondent's Class "D" license expired on March 29, 2006.

Base Penalty $2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

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

Adjustment $2,250

$250

Violation Events

Number of Violation Events 1 | 10 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $250

One monthly event is recommended, calculated from the date of the investigation, January 22, 2008, to the date of compliance, February 1, 2008.

Good Faith Efforts to Comply

0.0% Reduction — $0

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

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

Violation Subtotal $250

Economic Benefit (EB) for this violation

Estimated EB Amount $126

Statutory Limit Test

Violation Final Penalty Total $376

This violation Final Assessed Penalty (adjusted for limits) $376

Economic Benefit Worksheet

Respondent Gregory L. Popko
Case ID No. 38459
Reg. Ent. Reference No. RN103500948
Media All Occupational Licenses
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]	$111	29-Mar-2006	1-Feb-2008	2.76	$15	$111	$126
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs	The one-time avoided cost includes the amount to renew the Class "D" operator license, calculated from the date the Respondent's operator license expired to the date the Respondent ceased operating the Facility.						

Approx. Cost of Compliance $111

TOTAL $126

Compliance History Report

Customer/Respondent/Owner-Operator:	CN602020901	POPKO, GREGORY L	Classification:	Rating:
Regulated Entity:	RN103500948	POPKO, GREGORY L	Classification:	Site Rating:

ID Number(s): Water System Operator WO0007157

Location: 3124 Concord Dr., Mesquite, Dallas County

TCEQ Region: REGION 04 - DFW METROPLEX

Date Compliance History Prepared: October 02, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: October 02, 2004 to October 02, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Rebecca Clausewitz Phone: (210) 403-4012

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 judgments, and consent decrees of the state of Texas and the federal government.
N/A

B. Any criminal convictions of the state of Texas and the federal government.
N/A

C. Chronic excessive emissions events.
N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 04/22/2008 (615674)

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 GREGORY L. POPKO; RN103500948	**§ § § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT ORDER
DOCKET NO. 2009-1633-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. The respondent made the subject of this Order is Gregory L. Popko ("Mr. Popko").

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

FINDINGS OF FACT

1. Mr. Popko operated a public water system located at Hanson Pipe & Precast, Inc., 1003 North MacArthur Boulevard, Grand Prairie, Dallas County, Texas (the "Facility").

2. The Facility has 15 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). Mr. Popko performed process control duties in the production or distribution of drinking water for the Facility as defined in 30 TEX. ADMIN. CODE § 290.38(63).

3. During an investigation conducted on January 22, 2008, a TCEQ Dallas/FortWorth Regional Office investigator documented that Mr. Popko failed to maintain a valid, effective public water system operator license issued by the Commission prior to performing process control duties for the production and distribution of drinking water. Specifically, Mr. Popko operated the Facility without the required operator license. The Facility is required to be operated under the direct supervision of an operator with a valid Class "D" license, however, Mr. Popko's license expired on March 29, 2006.

4. On January 23, 2008, Mr. Popko was issued Field Citation No. 00236 for operating the Facility without possessing the required Class "D" Water Operator license. After several failed attempts by TCEQ staff to obtain Mr. Popko's signature on the Field Citation so the matter could be resolved, the case was referred to the Enforcement Division on September 8, 2009.

5. Mr. Popko received notice of the violation on or about September 13, 2009.

6. The Executive Director recognizes that Mr. Popko ceased operating the Facility on or about February 1, 2008. Field Citation No. 00236 assessed Mr. Popko a $210.00 fine, which was paid on February 22, 2008, by Hanson Pipe & Precast, Inc.

7. 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 Gregory L. Popko" (the "EDPRP") in the TCEQ Chief Clerk's office on October 28, 2009.

8. By letter dated October 28, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Popko with notice of the EDPRP. According to the return receipt "green card," Mr. Popko received notice of the EDPRP on October 29, 2009, as evidenced by the signature on the card.

9. More than 20 days have elapsed since Mr. Popko received notice of the EDPRP, provided by the Executive Director. Mr. Popko 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. Popko is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 37, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3, Mr. Popko failed to maintain a valid, effective public water system operator license issued by the Commission prior to performing process control duties for the production and distribution of drinking water, in violation of 30 TEX. ADMIN. CODE §§ 30.5(a) and 30.381(b), TEX. WATER CODE § 37.003, and TEX. HEALTH & SAFETY CODE § 341.034(b).

3. As evidenced by Finding of Fact Nos. 7 and 8, the Executive Director timely served Mr. Popko 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. 9, Mr. Popko failed to file a timely answer 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. Popko 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. Popko 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 three hundred seventy-six dollars ($376.00) 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. Popko is assessed an administrative penalty in the amount of three hundred seventy-six dollars ($376.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Popko'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: Gregory L. Popko; Docket No. 2009-1633-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. Popko.

4. If Mr. Popko 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. Popko's failure to comply is not a violation of this Order. Mr. Popko shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Popko shall notify the Executive Director within seven days after Mr. Popko 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. Popko shall be made in writing to the Executive Director. Extensions are not effective until Mr. Popko 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. Popko if the Executive Director determines that Mr. Popko 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.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

For the Commission

AFFIDAVIT OF STEVEN M. FISHBURN

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Steven M. Fishburn. 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 Gregory L. Popko" (the "EDPRP") was filed with the Office of the Chief Clerk on October 28, 2009.

The EDPRP was mailed to Mr. Popko at his last known address on October 28, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Mr. Popko received notice of the EDPRP on October 29, 2009, as evidenced by the signature on the card.

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

Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Steven M. Fishburn, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 23rd day of December A.D., 2009.

Donna Mae Delgado
Notary Public
State of Texas
My Commission Expires
August 01, 2012

Notary Signature