

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-1092-PWS-E TCEQ ID RN104210885 CASE NO. 37955
RESPONDENT NAME: CUSTOM WATER CO., L.L.C.

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input 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 VIOLATIONS OCCURRED: East shore of Lake Nocona, near the dam office, one-half mile south of Montague on Highway 59, Montague 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 the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired March 15, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Tracy Chandler, Litigation Division, MC 175, (512) 239-0629
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Ms. Andrea Linson-Mgbeoduru, Water Enforcement Section, MC 169, (512) 239-1482

TCEQ Regional Contact: Mr. Cliff Moore, Abilene Regional Office, MC R-3, (325) 698-6123

Respondent: Mr. Edward A. Fenoglio, President, Custom Water Co., L.L.C., 106 Alamo Road, Montague, Texas 76251

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

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: N/A</p> <p>Dates of Investigation Relating to this Case: May 26, 2009</p> <p>Date of NOE Relating to this Case: June 26, 2009</p> <p>Background Facts: The EDPRP was filed on November 16, 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 November 18, 2009. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>PWS:</p> <ol style="list-style-type: none"> Failed to calibrate the manual disinfectant residual analyzers at least once every 30 days using chlorine solutions of known concentrations [30 TEX. ADMIN. CODE § 290.46(s)(2)(C)(i)]. Failed to provide an access ladder for the Facility's two ground storage tanks [30 TEX. ADMIN. CODE § 290.43(c)]. Failed to provide a device to readily determine the air-water-volume for the pressure tank [30 TEX. ADMIN. CODE § 290.43(d)(3)]. 	<p>Total Assessed: \$2,373</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$2,373</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: N/A</p> <p>Person Compliance History Classification: N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Immediately, begin and continue, at least once every 30 days, calibrating the manual disinfectant residual analyzers using chlorine solutions of known concentrations. Within 30 days: <ol style="list-style-type: none"> Provide an access ladder for the 0.0126 and 0.0088 million gallon ground storage tanks; and Provide a properly functioning and readily readable air-water-volume indicator on the pressure tank. Within 45 days, submit written certification demonstrating compliance with Ordering Provision Nos. 1 and 2.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	29-Jun-2009			
	PCW	2-Jul-2009	Screening	2-Jul-2009	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Custom Water Co., L.L.C.				
Reg. Ent. Ref. No.	RN104210885				
Facility/Site Region	3-Abilene	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	37955	No. of Violations	3		
Docket No.	2009-1092-PWS-E	Order Type	1660		
Media Program(s)	Public Water Supply	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Andrea Linson-Mgbeoduru		
		EC's Team	Enforcement Team 2		
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000		

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,600
---	-------------------	---------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History	45.0% Enhancement	Subtotals 2, 3, & 7	\$720
---------------------------	-------------------	--------------------------------	-------

Notes Enhancement due to one Notice of Violation with same or similar violations as those in the current enforcement action and two agreed final enforcement orders containing a denial of liability.

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	\$96	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$868	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,320
-----------------------------	-----------------------	---------

OTHER FACTORS AS JUSTICE MAY REQUIRE	2.3%	Adjustment	\$53
---	------	-------------------	------

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Enhancement recommended for the recovery of avoided costs.

Final Penalty Amount	\$2,373
-----------------------------	---------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,373
-----------------------------------	-------------------------------	---------

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 for non-expedited settlement.

PAYABLE PENALTY	\$2,373
------------------------	---------

Screening Date 2-Jul-2009

Docket No. 2009-1092-PWS-E

PCW

Respondent Custom Water Co., L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 37955

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104210885

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson-Mgbeoduru

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>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	2	40%
	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 (<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) 45%

>> **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

Enhancement due to one Notice of Violation with same or similar violations as those in the current enforcement action and two agreed final enforcement orders containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 45%

Screening Date 2-Jul-2009 **Docket No.** 2009-1092-PWS-E **PCW**
Respondent Custom Water Co., L.L.C. *Policy Revision 2 (September 2002)*
Case ID No. 37955 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN104210885
Media [Statute] Public Water Supply
Enf. Coordinator Andrea Linson-Mgbeoduru

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent <input type="text" value="25%"/>	
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input type="text"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="0%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

Notes

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Custom Water Co., L.L.C.
Case ID No. 37955
Reg. Ent. Reference No. RN104210885
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]	\$50	26-Apr-2009	26-May-2009	1.00	\$3	\$50	\$53
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount necessary to calibrate the manual disinfectant analyzer, calculated for the 30 days prior to the investigation.

Approx. Cost of Compliance \$50

TOTAL \$53

Screening Date 2-Jul-2009 **Docket No.** 2009-1092-PWS-E **PCW**
Respondent Custom Water Co., L.L.C. *Policy Revision 2 (September 2002)*
Case ID No. 37955 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN104210885
Media [Statute] Public Water Supply
Enf. Coordinator Andrea Linson-Mgbeoduru

Violation Number 2
Rule Cite(s) 30 Tex. Admin. Code § 290.43(c)
Violation Description Failed to provide an access ladder for the Facility's two ground storage tanks ("GST").

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Major	Moderate	Minor	
	Actual			
Potential	x			25%

>> Programmatic Matrix

	Major	Moderate	Minor	Percent
Falsification				
				0%

Matrix Notes Failure to provide ground storage tanks with properly fabricated features that allow for proper inspection may allow tank defect to go undetected and result in a significant amount of contaminants entering the system that exceed levels which are protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 4 37 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$1,000

Four monthly events are recommended based on two monthly events for each ground storage tank, calculated from the investigation date, May 26, 2009, to the screening date, July 2, 2009.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDRP/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 \$1,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$41 **Violation Final Penalty Total** \$1,483

This violation Final Assessed Penalty (adjusted for limits) \$1,483

Economic Benefit Worksheet

Respondent Custom Water Co., L.L.C.
Case ID No. 37955
Reg. Ent. Reference No. RN104210885
Media Public Water Supply
Violation No. 2

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	\$768	26-May-2009	28-Feb-2010	0.76	\$2	\$39	\$41
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

The delayed cost includes the estimated amount necessary to provide access ladders for the two GSTs. The date required is the investigation date. The final date is the estimated compliance date.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$768

TOTAL

\$41

Screening Date 2-Jul-2009 **Docket No.** 2009-1092-PWS-E **PCW**
Respondent Custom Water Co., L.L.C. *Policy Revision 2 (September 2002)*
Case ID No. 37955 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN104210885
Media [Statute] Public Water Supply
Enf. Coordinator Andrea Linson-Mgbeoduru

Violation Number 3
Rule Cite(s) 30 Tex. Admin. Code § 290.43(d)(3)
Violation Description Failed to provide a device to readily determine the air-water-volume for the pressure tank. Specifically, at the time of the investigation, it was documented that the air-water volume indicator was broken.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential		x			

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes Failing to provide the pressure tanks with some sanitary means of determining air-water-volume may result in the tank becoming water logged due to insufficient air volume, exposing the water supply to a significant amount of contaminants which would not exceed levels protective of human health.

Adjustment \$900

\$100

Violation Events

Number of Violation Events 1 37 Number of violation days

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

Violation Base Penalty \$100

One quarterly event is recommended, calculated from the investigation date, May 26, 2009, to the screening date, July 2, 2009.

Good Faith Efforts to Comply 0.0% Reduction \$0

	Before NOV	NOV to EDRP/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 \$100

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$3 **Violation Final Penalty Total** \$148

This violation Final Assessed Penalty (adjusted for limits) \$148

Economic Benefit Worksheet

Respondent Custom Water Co., L.L.C.
Case ID No. 37955
Reg. Ent. Reference No. RN104210885
Media Public Water Supply
Violation No. 3

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	\$50	26-May-2009	28-Feb-2010	0.76	\$0	\$3	\$3
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

The delayed cost includes the estimated amount to equip the pressure tanks with a functional air-water-volume indicator. The date required is the investigation date. The final date is the estimated compliance date.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$50

TOTAL

\$3

Compliance History Report

Customer/Respondent/Owner-Operator: CN602817876 Custom Water Co., L.L.C. Classification: _____ Rating: _____
Regulated Entity: RN104210885 OAKSHORES COMMUNITY Classification: _____ Site Rating: _____
ID Number(s): WATER LICENSING LICENSE 1690011
PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1690011
Location: ON THE EAST SHORE OF LAKE NOCONA, NEAR THE DAM OFFICE, ONE-HALF MILE SOUTH OF
MONTAGUE ON HIGHWAY 59, MONTAGUE COUNTY, TX
TCEQ Region: REGION 03 - ABILENE
Date Compliance History Prepared: July 14, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 29, 2004 to June 29, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Andrea Linson-Mgbeoduru Phone: 512-239-1482

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? Yes (OWNOPR)
3. If Yes, who is the current owner/operator? Custom Water Co., L.L.C.
4. If Yes, who was/were the prior owner(s)/operator(s) ? Edward Fenoglio
5. When did the change(s) in owner or operator occur? April 08, 2005

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.

Effective Date: 04/29/2005

ADMINORDER 2004-0766-PWS-E

Classification: Moderate

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

Description: Failure to provide a chlorine residual of 0.2 MG/L.

Classification: Moderate

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

Description: Failure to provide approved sodium hypochlorite.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)

Description: Failure to provide inspection ladders for the two ground storage tanks.

Classification: Minor

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

Description: Failure to provide maintenance to the pump station facility.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(2)

Description: Failure to provide raised curbing on access opening.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(2)

Description: Failure to provide locks for the two ground storage tanks.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(d)(3)

Description: Failure to provide proper facilities for air/water ratio/air filter.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(d)(3)

Description: Failure to provide air-water volume indicator.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(e)

Description: Failure to secure properly gate to the intruder-resistant fencing.

Effective Date: 12/15/2005

ADMINORDER 2005-0432-PWS-E

Classification: Major

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

Description: Failure to maintain ground monthly operating reports.

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(8)

Description: Failure to provide American Water Works Association ground storage tanks.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(2)

Description: Failure to design roof openings in accordance with current American Water Works Association Standards.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.110(e)(4)

Description: Failure to conduct and submit a quarterly distribution report for PWS each quarter.

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 02/24/2005 (371710)

2 09/07/2005 (405410)

3 05/09/2006 (464210)

4 06/26/2009 (747912)

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

Date: 08/22/2005 (405410) CN602817876

Self Report? NO Classification: Moderate

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

Description: Failure to provide a chlorine residual of 0.2 MG/L.

Self Report? NO Classification: Moderate

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

Description: Failure to provide approved sodium hypochlorite.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)

Description: Failure to provide inspection ladders for the two ground storage tanks.

Self Report? NO Classification: Minor

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

Description: Failure to provide maintenance to the pump station facility.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(2)

Description: Failure to provide raised curbing on access opening.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(2)

Description: Failure to provide locks for the two ground storage tanks.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(d)(3)

Description: Failure to provide proper facilities for air/water ratio/air filter.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(d)(3)

Description: Failure to provide air-water volume indicator.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(e)

Description: Failure to secure properly gate to the intruder-resistant fencing.

Self Report? NO Classification: Major

Citation: 2A TWC Chapter 7, SubChapter A 7.101

Description: Failure to comply with Commission Order Docket No. 2004-0766-PWS-E.

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
CUSTOM WATER CO., L.L.C.;
RN104210885**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2009-1092-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 Custom Water Co., L.L.C. (“Custom Water”).

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

FINDINGS OF FACT

1. Custom Water owns and operates a public water system located on the east shore of Lake Nocona, near the dam office, one-half mile south of Montague on Highway 59, Montague County, Texas (the “Facility”).
2. The Facility provides water for human consumption, has 414 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 May 26, 2009, a TCEQ Abilene Regional Office investigator documented that Custom Water:
 - a. Failed to calibrate the manual disinfectant residual analyzers at least once every 30 days using chlorine solutions of known concentrations. Specifically, the manual disinfectant analyzer had not been calibrated within the prior 30 days;
 - b. Failed to provide an access ladder for the Facility’s two ground storage tanks; and

- c. Failed to provide a device to readily determine the air-water-volume for the pressure tank. Specifically, the air-water-volume indicator was broken.
4. Custom Water received notice of the violations on or about July 1, 2009.
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 Custom Water Co., L.L.C.,” (the “EDPRP”) in the TCEQ Chief Clerk’s office on November 16, 2009.
6. By letter dated November 16, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Custom Water with notice of the EDPRP. According to the return receipt “green card,” Custom Water received notice of the EDPRP on November 18, 2009, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Custom Water received notice of the EDPRP, provided by the Executive Director. Custom Water 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, Custom Water 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.a., Custom Water failed to calibrate the manual disinfectant residual analyzers at least once every 30 days using chlorine solutions of known concentrations, in violation of 30 TEX. ADMIN. CODE § 290.46(s)(2)(C)(i).
3. As evidenced by Finding of Fact No. 3.b., Custom Water failed to provide an access ladder for the Facility’s two ground storage tanks, in violation of 30 TEX. ADMIN. CODE § 290.43(c).
4. As evidenced by Finding of Fact No. 3.c., Custom Water failed to provide a device to readily determine the air-water-volume for the pressure tank, in violation of 30 TEX. ADMIN. CODE § 290.43(d)(3).
5. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Custom Water with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).

6. As evidenced by Finding of Fact No. 7, Custom Water failed to file a timely answer to the EDPRP, 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 Custom Water and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Custom Water 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.
8. An administrative penalty in the amount of two thousand three hundred seventy-three dollars (\$2,373.00) 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.
9. 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. Custom Water is assessed an administrative penalty in the amount of two thousand three hundred seventy-three dollars (\$2,373.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Custom Water'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: Custom Water Co., L.L.C.; Docket No. 2009-1092-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. Custom Water shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Order, Custom Water shall begin and continue, at least once every 30 days, calibrating the manual disinfectant residual analyzers using chlorine solutions of known concentrations, in accordance with 30 TEX. ADMIN. CODE § 290.46.
- b. Within 30 days after the effective date of this Order, Custom Water shall:
 - i. Provide an access ladder for the 0.0126 and 0.0088 million gallon ground storage tanks, in accordance with 30 TEX. ADMIN. CODE § 290.43 and
 - ii. Provide a properly functioning and readily readable air-water-volume indicator on the pressure tank, in accordance with 30 TEX. ADMIN. CODE § 290.43.
- c. Within 45 days after the effective date of this Order, Custom Water shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b.ii. 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.”

Custom Water shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b.ii. 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:

Cliff Moore, Water Section Manager
Texas Commission on Environmental Quality
Abilene Regional Office
1977 Industrial Boulevard
Abilene, Texas 79602-7833

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF TRACY CHANDLER

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Tracy Chandler. 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 Custom Water Co., L.L.C.” (the “EDPRP”) was filed with the Office of the Chief Clerk on November 16, 2009.

The EDPRP was mailed to Custom Water at its last known address on November 16, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Custom Water received notice of the EDPRP on November 18, 2009, as evidenced by the signature on the card.

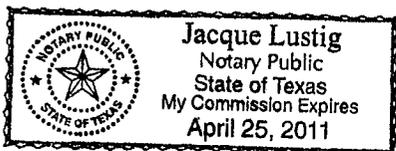
More than 20 days have elapsed since Custom Water received notice of the EDPRP. Custom Water failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”

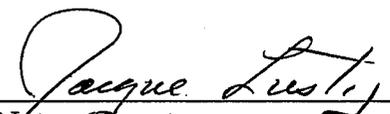


Tracy Chandler, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Tracy Chandler, 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 25th day of February A.D., 2010.





Notary Signature