

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2006-0682-MLM-E TCEQ ID RN101230654 CASE NO.: 5765
RESPONDENT NAME: JOSEPH GABER DBA CODY'S MARKET & MARINA AND
VICTORIA GABER DBA CODY'S MARKET & MARINA

ORDER TYPE:		
<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	

CASE TYPE:		
<input type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 5105 Tin Top Road, Weatherford, Parker County

TYPE OF OPERATION: convenience store with retail sales of gasoline and a 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 29, 2010. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney: Ms. Tammy Mitchell, Litigation Division, MC 175, (512) 239-3400
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400
TCEQ Enforcement Coordinator: Ms. Rebecca Clausewitz, Water Enforcement Section, R-13, (210) 403-4012
TCEQ Regional Contact: Mr. Sid Slocum, DFW Regional Office, R-4, (817) 588-5901
Respondent: Mr. Joseph Gaber, 5105 Tin Top Road, Weatherford, Texas 76087
 Ms. Victoria Gaber, Ms. Victoria Gaber, 4423 Holly Street, Kansas City, Missouri 64111
Respondent Joseph Gaber's Attorney: Mr. Mark McPherson, McPherson LawFirm, PC, 17400 Dallas Parkway, Suite 112,
 Dallas, Texas 75287

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: May 5, 2005; November 21, 2006</p> <p>Dates of NOEs Relating to this Case: June 23, 2005; November 22, 2006</p> <p>Background Facts: This case was referred to the Litigation Division on June 9, 2006. The EDPRP was filed on July 20, 2006. An EDFARP was filed on December 11, 2006. Additional violations were added to the case, and an EDSARP was filed on June 13, 2007. The Respondents failed to file an answer, so a notice of default was published in the Texas Register on December 7, 2007, and the case was set for the April 2, 2008, agenda. A few days prior to the April 2, 2008, agenda the Respondents contacted TCEQ Small Business Assistance and asked that the default order be postponed to allow them to get their wells tested and bring the Facility into compliance. The Respondents also applied for assistance with water well testing through the TCEQ LPST program, filed hearing requests, and requested a Financial Ability to Pay review. The case was referred to SOAH, the preliminary hearing was waived, and the parties engaged in discovery. Settlement was achieved and the agreed order was signed on November 12, 2009.</p> <p>Current Compliance Status: The Respondents have not yet submitted documentation to certify compliance with the technical requirements.</p> <p>MLM: PWS-</p> <p>1. Failed to provide disinfection equipment to maintain a free chlorine residual of 0.2 milligrams per liter (mg/L) throughout the distribution system at all times, failed to test the chlorine residual on water collected from various locations within the distribution system using a test kit which employs a diethyl-p-phenylenediamine (DPD) indicator, and failed to maintain a supply of calcium hypochlorite disinfectant on hand for use when making repairs, setting meters and disinfecting new mains prior to placing them in service [30 TEX. ADMIN. CODE §§ 290.42(b)(1), 290.46(d)(2)(A), 290.110(d)(3)(C)(ii), and 290.46(h).</p>	<p>Total Assessed: \$14,451</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Off-set</p> <p>Total Paid/Due to General Revenue: \$451/\$14,000</p> <p>The Respondents paid \$451 of the administrative penalty. The remaining amount of \$14,000 shall be payable in 35 monthly payments of \$400 each.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification (Both Respondents): <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Order Justification: Absence of management practices designed to ensure compliance.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondents implemented the following corrective measures:</p> <p><u>At the PWS Facility:</u></p> <ol style="list-style-type: none"> 1. Provided disinfection equipment and ensured that the equipment is operated to maintain a free chlorine residual of 0.02 mg/L, began conducting and recording the results of disinfectant residual tests taken at representative locations in the distribution system using a test kit which employs a DPD indicator, and implemented procedures to ensure that a supply of calcium hypochlorite disinfectant is kept on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service; 2. Provided a well casing 18" above the elevation of the finished floor of the pump house, installed a concrete sealing block around the well, sealed all wellheads with gaskets or a pliable crack-resistant sealing compound, and installed a well casing vent; 3. Installed a flow meter on the well pump discharge line; 4. Began maintaining monthly operation reports; 5. Enclosed the well in a locked ventilated well house; 6. Submitted an accurate and up-to-date map of the distribution system; and 7. Provided a pressure tank capacity of a minimum of 220 gallons. <p><u>At the PST Facility:</u></p> <ol style="list-style-type: none"> 1. Conducted a successful operability test on the cathodic protection system; 2. Conducted a successful tightness test on the UST system; 3. Began release detection monitoring for all USTs; and 4. Began conducting effective manual inventory control procedures for all USTs.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>2. Failed to secure a sanitary control easement for well No. 1 [30 TEX. ADMIN. CODE § 290.41(c)(1)(F)].</p> <p>3. Failed to provide a well casing 18 inches above the elevation of the finished floor of the pump house or natural ground surface, failed to provide a concrete sealing block that extends at least three feet from the exterior well casing in all directions, failed to provide a well casing vent with a 16-mesh or finer corrosion resistant screen, and failed to seal the well head with the use of gaskets or a pliable crack-resistant caulking compound [30 TEX. ADMIN. CODE § 290.41(c)(3)(B)(J) & (K)].</p> <p>4. Failed to install a flow meter on the well pump discharge line service [30 TEX. ADMIN. CODE § 290.41(c)(3)(N)].</p> <p>5. Failed to enclose the well in a well house with a lock or an intruder-resistant fence [30 TEX. ADMIN. CODE § 290.41(c)(3)(O)].</p> <p>6. Failed to submit “as-built” plans and specifications, prepared by a registered professional engineer well versed in the design and construction of public water systems, which describe the existing facilities, failed to provide well completion data for well No. 1, and failed to provide an accurate up-to-date map of the distribution system [30 TEX. ADMIN. CODE § 290.46(n)(1), (2) and (3)].</p> <p>7. Failed to keep on file and make available for commission review the following records: monthly operating reports, a plant operations manual, and up-to-date chemical and microbiological plan [30 TEX. ADMIN. CODE §§ 290.46(f), 290.42(1) and 290.121].</p> <p>8. Failed to provide a pressure tank capacity of 10 gallons per connection with a minimum requirement of 220 gallons [30 TEX. ADMIN. CODE § 290.45(c)(1)(A)(ii)].</p> <p><u>PST-</u></p> <p>9. Failed to conduct effective manual or automatic inventory control procedures for all underground storage tanks at retail service stations [30 TEX. ADMIN. CODE § 334.48(c)].</p> <p>10. Failed to perform an operability test on the cathodic protection system within three to six months after installation and at a subsequent frequency of at least once every three years [30 TEX. ADMIN. CODE § 334.49(c)(4)(C) and TEX. WATER CODE § 26.3475(d)].</p>		<p>Ordering Provisions:</p> <p>The Respondents shall undertake the following technical requirements at the PWS Facility:</p> <ol style="list-style-type: none"> 1. Within 365 days: <ol style="list-style-type: none"> a. Properly complete an interconnection with a TCEQ-approved regional water supplier that provides treated water under direct pressure and cease using the well to supply drinking water to the PWS Facility; or b. Obtain a sanitary control easement that covers the land within 150 feet of the well or obtain an exception to the easement requirement; c. Submit “as-built” plans and specifications, prepared by a registered professional engineer well versed in the design and construction of public water systems, for the existing PWS Facility; d. Obtain Commission approval of the well completion data that includes such information as the well material setting data, geological log, sealing information, disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well or obtain an exception to the well completion data requirement; e. Create and begin maintaining a thorough and up-to-date plant operations manual for operator review and reference; and f. Create and begin maintaining a chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the PWS Facility will use to comply with the monitoring requirements. 2. Within 380 days, certify compliance with either Ordering Provision no. 1.a. or Ordering Provision nos. 1.b. through 1.f.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>11. Failed to monitor all tanks in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring), failed to monitor the piping for releases at least once every month (not to exceed 35 days between each monitoring) by using one or more methods of release detection or test the piping or test the piping by means of a piping tightness test conducted in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory capable of detecting any release from the piping system of 0.1 gallons per house when the piping pressure is at 150% of normal operating pressure, and failed to test the line leak detector at least once per year for performance and operational reliability [30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2)(A)(ii)(I), and (b)(2)(A)(i)(III), and TEX. WATER CODE § 26.3475(a) and (c)(1)].</p> <p>12. Failed to immediately investigate and confirm all suspected releases of regulated substances requiring reporting within 30 days or another procedure and scheduled approved by the agency [30 TEX. ADMIN. CODE § 334.72 and TEX. ADMIN CODE § 334.74].</p>		<p>3. Should the Respondents choose to interconnect with a regional water supplier pursuant to Ordering Provision no. 1.a., additional requirements may apply. These requirements include, but are not limited to: obtaining a valid purchase water contract with the regional water supplier, submitting plans and specifications for the interconnection with the regional water supplier to the TCEQ for review and approval, and continuing routine chemical and microbiological monitoring of the water according to the monitoring plan.</p>



DATES	Assigned	05-Jul-2005	Screening	12-Jul-2005	EPA Due	
	PCW	12-Jan-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
Reg. Ent. Ref. No.	RN101230654
Facility/Site Region	4-Dallas/Fort Worth <
Major/Minor Source	Minor Source <

CASE INFORMATION			
Enf./Case ID No.	5765	No. of Violations	8
Docket No.	2006-0682-MLM-E	Order Type	Findings <
Media Program(s)	Public Water Supply <	Enf. Coordinator	Rebecca Clausewitz
Multi-Media		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	\$3,300
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	7% Enhancement	Subtotals 2, 3, & 7	\$231
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Notes

The Respondents received one NOV with the same or similar violations to those violations addressed in this enforcement action and one NOV for violations that are not the same or similar to those addressed in this enforcement action.

Culpability	No <	0% Enhancement	Subtotal 4	\$0
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Notes

The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with a small x)

Notes

The Respondents are not yet in compliance.

Economic Benefit	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$662	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$7,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,531
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount	\$3,531
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,531
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

No deferral is recommended because this is not an expedited case.

PAYABLE PENALTY	\$3,531
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Screening Date 12-Jul-2005

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Member 2002)

Case ID No. 5765

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101230654

Media [Statute] Public Water Supply

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)	1	5%
	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)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 7%

>> Repeat Violator (Subtotal 3)

No <

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer <

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondents received one NOV with the same or similar violations to those violations addressed in this enforcement action and one NOV for violations that are not the same or similar to those addressed in this enforcement action.

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

Screening Date 12-Jul-2005

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Member 2002)

Case ID No. 5765

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101230654

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 1

30 Tex. Admin. Code §§ 290.42(b)(1), 290.46(d)(2)(A), 290.46(h), and 290.110(d)(3)(C)(i) [now 30 Tex. Admin. Code § 290.110(d)(1)(C)(i)]

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Failed to provide disinfection equipment to maintain a free chlorine residual of 0.2 milligrams per liter (mg/L) throughout the distribution system at all times, failed to test the chlorine residual on water collected from various locations within the distribution system using a test kit which employs a diethyl-p-phenylenediamine (DPD) indicator and failed to maintain a supply of calcium hypochlorite disinfectant on hand for use when making repairs, setting meters and disinfecting new mains prior to placing them in service. Specifically, during the investigation, a chlorine residual test conducted revealed a chlorine residual of 0.0 mg/L and it was documented that the water system did not have any chlorination equipment installed at the facility and the water system did not possess a DPD indicator to test the chlorine residual or have a supply of calcium hypochlorite.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

		Harm			
		Major	Moderate	Minor	
OR	Actual				Percent 25%
	Potential	X			

>> Programmatic Matrix

		Falsification	Major	Moderate	Minor	
						Percent

Matrix Notes: Failing to provide disinfection equipment and test the chlorine residual in the distribution system with a proper chlorine test kit may allow a significant amount of undetected contaminants which would not exceed levels that are protective of human health enter be distributed for human consumption.

Adjustment -\$750

Base Penalty Subtotal \$250

Violation Events

Number of Violation Events 3

	daily	
	monthly	X
mark only one	quarterly	
use a small x	semiannual	
	annual	
	single event	

Violation Base Penalty \$750

Three monthly events are recommended based on documentation of the violation during the May 5, 2005 investigation to the screening date of July 12, 2005.

Economic Benefit (EB) for this violation

Estimated EB Amount \$132

Statutory Limit Test

Violation Final Penalty Total \$803

This violation Final Assessed Penalty (adjusted for limits) \$803

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
Case ID No. 5765
Reg. Ent. Reference No. RN101230654
Media [Statute] 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
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No commas or \$

Delayed Costs

Equipment	\$1,000	05-May-2005	01-Jun-2006	1.1	\$4	\$72	\$75
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs Estimated cost to install chlorination equipment to chlorinate the water and to keep a supply of calcium hypochlorite. Date required is the investigation date and final date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling	\$50	05-May-2005	01-Jun-2006	1.1	\$3	\$54	\$56
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs Estimated cost to perform chlorine residual tests on water collected at various points in the distribution system at least once every seven days using a DPD indicator. Date required is the investigation date and the final date is the estimated date of compliance.

Approx. Cost of Compliance \$1,050

TOTAL \$132

Screening Date 12-Jul-2005

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Member 2002)

Case ID No. 5765

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101230654

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 2

Primary Rule Cite(s) 30 Tex. Admin. Code § 290.41(c)(1)(F)

Secondary Rule Cite(s)

Violation Description

Failed to secure a sanitary control easement for well No. 1. Specifically, during the investigation, Mr. Joseph Gaber stated that he did not have an easement because he owned ten acres of land surrounding the well; however, Mr. Gaber was unable to provide the deed to the property he claimed to own.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Harm

Release	Major	Moderate	Minor	Percent
Actual				5%
Potential			x	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent

Matrix Notes

Failure to secure a sanitary easement may expose the wells to an insignificant amount of contaminants which would not exceed levels that are protective of human health.

Adjustment -\$950

Base Penalty Subtotal \$50

Violation Events

Number of Violation Events 1

<i>daily</i>	
<i>monthly</i>	
<i>quarterly</i>	
<i>semiannual</i>	
<i>annual</i>	
<i>single event</i>	x

Violation Base Penalty \$50

One single event is recommended based on documentation of the violation during the May 5, 2005 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6

Violation Final Penalty Total \$54

This violation Final Assessed Penalty (adjusted for limits) \$54

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
Case ID No. 5765
Reg. Ent. Reference No. RN101230654
Media [Statute] 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
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$100	05-May-2005	01-Jul-2006	1.2	\$6	n/a	\$6
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs Estimated cost to secure a sanitary control easement and file the easement in the county courthouse. Date required is the investigation date and the final date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$100

TOTAL \$6

Screening Date 12-Jul-2005

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Member 2002)

Case ID No. 5765

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101230654

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 3

Primary Rule Cite(s) 30 Tex. Admin. Code § 290.41(c)(3)(B), (J) and (K)

Secondary Rule Cite(s)

Violation Description

Failed to provide a well casing 18 inches above the elevation of the finished floor of the pump house or natural ground surface, failed to provide a concrete sealing block that extends at least three feet from the exterior well casing in all directions, failed to provide a well casing vent with a 16-mesh or finer corrosion resistant screen and failed to seal the well head with the use of gaskets or a pliable crack-resistant caulking compound. Specifically, during the investigation, it was documented that the well casing was measured at approximately five inches from the ground, the well did not have a concrete sealing block, the well did not have a casing vent and the well head was not sealed.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Human health or the environment could be exposed to a significant amount of contaminants that exceed levels that are protective of human health as a result of the violation.

Adjustment -\$750

Base Penalty Subtotal \$250

Violation Events

Number of Violation Events 3

	daily	
	monthly	X
mark only one	quarterly	
use a small x	semiannual	
	annual	
	single event	

Violation Base Penalty \$750

Three monthly events are recommended based on documentation of the violation during the May 5, 2005 investigation to the screening date of July 12, 2005.

Economic Benefit (EB) for this violation

Estimated EB Amount \$148

Statutory Limit Test

Violation Final Penalty Total \$803

This violation Final Assessed Penalty (adjusted for limits) \$803

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
Case ID No. 5765
Reg. Ent. Reference No. RN101230654
Media [Statute] 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
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$1,500	05-May-2005	30-Sep-2006	1.4	\$7	\$141	\$148
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to provide a well casing casing 18 inches above the elevation of the finished floor of the pump house or natural ground surface, a concrete sealing block that extends at least three feet from the exterior well casing in all directions, a well casing vent with a 16-mesh or finer corrosion resistant screen and seal the well head with the use of gaskets or a pliable crack-resistant caulking compound. Date required is the investigation date and final date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,500

TOTAL \$148

Screening Date 12-Jul-2005

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Member 2002)

Case ID No. 5765

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101230654

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 4

Primary Rule Cite(s) 30 Tex. Admin. Code § 290.41(c)(3)(N)

Secondary Rule Cite(s)

Violation Description Failed to install a flow meter on the well pump discharge line.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

		Harm		
Release		Major	Moderate	Minor
OR	Actual			
	Potential			x

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes Failure to provide a flow meter can contribute to an inadequate water supply because the operator cannot make the necessary production and usage calculations to ensure a continuous and safe water supply.

Adjustment -\$950

Base Penalty Subtotal \$50

Violation Events

Number of Violation Events 1

	daily	
	monthly	
mark only one	quarterly	
use a small x	semiannual	
	annual	
	single event	x

Violation Base Penalty \$50

One single event is recommended based on documentation of the violation during the May 5, 2005 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$19

Violation Final Penalty Total \$54

This violation Final Assessed Penalty (adjusted for limits) \$54

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
Case ID No. 5765
Reg. Ent. Reference No. RN101230654
Media [Statute] Public Water Supply
Violation No. 4

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	\$250	05-May-2005	01-Jun-2006	1.1	\$1	\$18	\$19
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost for a flow meter for the well. Date required is the investigation date and the final date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$250

TOTAL \$19

Screening Date 12-Jul-2005

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Member 2002)

Case ID No. 5765

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101230654

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 5

Primary Rule Cite(s) 30 Tex. Admin. Code § 290.41(c)(3)(O)

Secondary Rule Cite(s)

Violation Description

Failed to enclose the well in a well house with a lock or an intruder-resistant fence. Specifically, during the investigation, it was documented that the well was enclosed by a circular concrete slab with a concrete lid on top of the slab that was not locked.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Failure to provide a intruder-resistant fence around the well site or a ventilated well house may result in vandalism and contamination of the water system.

Adjustment -\$750

Base Penalty Subtotal \$250

Violation Events

Number of Violation Events 3

	daily	
	monthly	x
mark only one	quarterly	
use a small x	semiannual	
	annual	
	single event	

Violation Base Penalty \$750

Three monthly events are recommended based on documentation of the violation during the May 5, 2005 investigation to the screening date of July 12, 2005.

Economic Benefit (EB) for this violation

Estimated EB Amount \$49

Statutory Limit Test

Violation Final Penalty Total \$803

This violation Final Assessed Penalty (adjusted for limits) \$803

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
Case ID No. 5765
Reg. Ent. Reference No. RN101230654
Media [Statute] Public Water Supply
Violation No. 5

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	\$500	05-May-2005	30-Sep-2006	1.4	\$2	\$47	\$49
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to install an intruder-resistant fence around the well. Date required is the investigation date and the final date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$500

TOTAL \$49

Screening Date 12-Jul-2005

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Member 2002)

Case ID No. 5765

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101230654

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 6

Primary Rule Cite(s) 30 Tex. Admin. Code § 290.46(n)(1), (2) and (3)

Secondary Rule Cite(s)

Violation Description Failed to submit "as-built" plans and specifications that describe the existing facilities that are prepared by a registered professional engineer well versed in the design and construction of public water systems, failed to provide well completion data for well No. 1 and failed to provide an accurate up-to-date map of the distribution system.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent.

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (10%).

Matrix Notes The Respondent failed to comply with 100 percent of this rule.

Adjustment -\$900

Base Penalty Subtotal \$100

Violation Events

Number of Violation Events 1

Table with frequency options: daily, monthly, quarterly, semiannual, annual, single event (marked with X).

Violation Base Penalty \$100

One single event is recommended based on documentation of the violation during the May 5, 2005 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$188

Violation Final Penalty Total \$107

This violation Final Assessed Penalty (adjusted for limits) \$107

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
Case ID No. 5765
Reg. Ent. Reference No. RN101230654
Media [Statute] Public Water Supply
Violation No. 6

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				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$2,500	05-May-2005	01-Jun-2006	1.1	\$9	\$179	\$188
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to secure the services of a Professional Engineer to develop and submit "as-built" plans and specifications of the water system which would include well completion data and a map of the distribution system. Date required is the investigation date and final date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$2,500

TOTAL \$188

Screening Date 12-Jul-2005

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Member 2002)

Case ID No. 5765

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101230654

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 7

Primary Rule Cite(s) 30 Tex. Admin. Code §§ 290.46(f), 290.42(l) and 290.121

Secondary Rule Cite(s)

Violation Description Failed to keep on file and make available for Commission review the following records: Monthly operating reports, a plant operations manual and an up-to-date chemical and microbiological plan.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Harm

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent.

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (10%).

Matrix Notes The Respondent failed to comply with 100 percent of this rule.

Adjustment -\$900

Base Penalty Subtotal \$100

Violation Events

Number of Violation Events 1

Table for violation frequency: daily, monthly, quarterly, semiannual, annual, single event (marked with X).

Violation Base Penalty \$100

One single event is recommended based on documentation of the violation during the May 5, 2005 investigation.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$107

This violation Final Assessed Penalty (adjusted for limits) \$107

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
Case ID No. 5765
Reg. Ent. Reference No. RN101230654
Media [Statute] Public Water Supply
Violation No. 7

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				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$100	05-May-2005	01-Jun-2006	1.1	\$5	n/a	\$5
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs Estimated cost to develop and maintain monthly operation reports, a plant operations manual and an up-to-date microbiological monitoring plan. Date required is the investigation date and final date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$100

TOTAL \$5

Screening Date 12-Jul-2005

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Member 2002)

Case ID No. 5765

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101230654

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 8

Primary Rule Cite(s) 30 Tex. Admin. Code § 290.45(c)(1)(A)(ii)

Secondary Rule Cite(s)

Violation Description Failed to provide a pressure tank capacity of 10 gallons per connection with a minimum requirement of 220 gallons. Specifically, during the investigation, it was documented that the pressure tank capacity provided was 81 gallons. The water system is required to maintain a minimum pressure tank capacity of 220 gallons.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent 25%
	Potential	x			

>> Programmatic Matrix

		Falsification	Major	Moderate	Minor	
						Percent
Matrix Notes	Inadequate pressure tank capacity (63% deficient) could result in water outages and back flow problems and may allow a significant amount of contaminants to enter the water supply which would exceed levels that are protective of human health.					

Adjustment -\$750

Base Penalty Subtotal \$250

Violation Events

Number of Violation Events 3

mark only one use a small x	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$750

Three monthly events are recommended based on documentation of the violation during the May 5, 2005 investigation to the screening date of July 12, 2005.

Economic Benefit (EB) for this violation

Estimated EB Amount \$116

Statutory Limit Test

Violation Final Penalty Total \$803

This violation Final Assessed Penalty (adjusted for limits) \$803

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
Case ID No. 5765
Reg. Ent. Reference No. RN101230654
Media [Statute] Public Water Supply
Violation No. 8

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	\$1,000	05-May-2005	31-Dec-2006	1.7	\$6	\$111	\$116
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to provide adequate pressure tank capacity. Date required is the investigation date and the final date is the estimated date of compliance.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$1,000

TOTAL \$116



Penalty Calculation Worksheet (PCW)

PCW 2

TCEQ

DATES	Assigned	9-Jan-2007			
	PCW	12-Jan-2007	Screening	11-Jan-2007	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina				
Reg. Ent. Ref. No.	RN101230654				
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	5765	No. of Violations	4		
Docket No.	2006-0682-MLM-E	Order Type	Findings		
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Rebecca Clausewitz		
Multi-Media		EC's Team	2		
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000	

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$10,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	4% Enhancement	Subtotals 2, 3, & 7	\$420
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Notes: The Respondents received two NOV's for violations that are not similar to those violations addressed in this enforcement action.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes: Respondents do not meet the culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes: The Respondents are not yet in compliance.

Total EB Amounts	\$1,813	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$2,075	<i>*Capped at the Total EB \$ Amount</i>		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$10,920
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount \$10,920

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$10,920
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$10,920
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Screening Date 11-Jan-2007

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria C

Policy Revision 2 (September 2002)

Case ID No. 5765

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101230654

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rebecca Clausewitz

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (<i>number of NOV's meeting criteria</i>)	0	0%
	Other written NOV's	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	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) 4%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

The Respondents received two NOV's for violations that are not similar to those violations addressed in this enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 4%

Screening Date 11-Jan-2007

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber db

Policy Revision 2 (September 2002)

Case ID No. 5765

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101230654

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rebecca Clausewitz

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 334.48(c)

Violation Description Failed to conduct effective manual or automatic inventory control procedures for all underground storage tanks at retail service stations. Specifically, during the investigation, it was documented that the facility failed to record inventory to the nearest 1/8 of an inch after manually gauging the tanks.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%). Includes 'OR' label.

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0%).

Matrix Notes Failure to properly conduct effective inventory control procedures could result in an undetected release of a significant amount of petroleum product that would exceed levels protective of human health or environmental receptors.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 Number of violation days 51

Table for event frequency: daily, monthly, quarterly (marked with x), semiannual, annual, single event.

Violation Base Penalty \$2,500

One quarterly event is recommended for the time frame from the date of the investigation, November 21, 2006, to the screening date, January 11, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$2,600

This violation Final Assessed Penalty (adjusted for limits) \$2,600

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
Case ID No. 5765
Req. Ent. Reference No. RN101230654
Media Petroleum Storage Tank
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				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$50	21-Nov-2006	30-Jun-2007	0.6	\$2	n/a	\$2

Notes for DELAYED costs

Estimated cost to accurately conduct inventory control. Date required is the investigation date. Final date is 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				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$50

TOTAL

\$2

Screening Date 11-Jan-2007

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba

Policy Revision 2 (September 2002)

Case ID No. 5765

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101230654

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rebecca Clausewitz

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.49(c)(4)(C) and Tex Water Code § 26.3475(d)

Violation Description Failed to perform an operability test on the cathodic protection system within three to six months after installation and at a subsequent frequency of at least once every three years. Specifically, during the investigation, it was documented that an operability test had not been performed on the cathodic protection system within the past three years.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				0%

Matrix Notes Failure to perform an operability test on the cathodic protection system could result in an undetected release of a significant amount of petroleum product that would exceed levels protective of human health or environmental receptors.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 9 Number of violation days

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One monthly event is recommended for the time frame from the date of the investigation, November 21, 2006, to the date of compliance, November 30, 2006.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,796

Violation Final Penalty Total \$2,600

This violation Final Assessed Penalty (adjusted for limits) \$2,600

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
Case ID No. 5765
Req. Ent. Reference No. RN101230654
Media Petroleum Storage Tank
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				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$1,500	21-Nov-2003	30-Nov-2006	3.9	\$296	\$1,500	\$1,796

Notes for AVOIDED costs

Estimated cost to perform an operability test. Date required is three years prior to the investigation date. Final date is the date an operability test was completed.

Approx. Cost of Compliance \$1,500

TOTAL \$1,796

Screening Date 11-Jan-2007

Docket No. 2006-0682-MLM-E

PCW

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba

Policy Revision 2 (September 2002)

Case ID No. 5765

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN101230654

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Rebecca Clausewitz

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code §§ 334.50(b)(1)(A), 334.50(b)(2)(A)(ii)(I) and (b)(2)(A)(i)(III) and Tex. Water Code § 26.3475(a) and (c)(1)

Violation Description

Failed to monitor all tanks in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring), failed to monitor the piping for releases at least once every month (not to exceed 35 days between each monitoring) by using one or more methods of release detection or test the piping by means of a piping tightness test conducted in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory that shall be capable of detecting any release from the piping system of 0.1 gallons per hour when the piping pressure is at 150% of normal operating pressure and failed to test the line leak detector at least once per year for performance and operational reliability.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to perform release detection on the piping could expose human health or the environment to significant amounts of petroleum products that would exceed levels that are protective of human health or environmental receptors.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 51 Number of violation days

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

Violation Base Penalty \$2,500

One quarterly event is recommended for the time frame from the date of the investigation, November 21, 2006, to the screening date, January 11, 2007.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$15

Violation Final Penalty Total \$2,600

This violation Final Assessed Penalty (adjusted for limits) \$2,600

Economic Benefit Worksheet

Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
Case ID No. 5765
Req. Ent. Reference No. RN101230654
Media Petroleum Storage Tank
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				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$500	21-Nov-2006	30-Jun-2007	0.6	\$15	n/a	\$15

Notes for DELAYED costs

Estimated cost to perform a piping tightness test, test the line leak detectors and monitor the tanks for releases. Date required is the investigation date. Final date is the estimated date of compliance for monitoring the tanks for releases. On November 30, 2006, a piping tightness test was completed and the line leak detectors were tested.

Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$500
TOTAL \$15

Screening Date 11-Jan-2007 **Docket No.** 2006-0682-MLM-E **PCW**
Respondent Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba *Policy Revision 2 (September 2002)*
Case ID No. 5765 *PCW Revision December 8, 2006*
Reg. Ent. Reference No. RN101230654
Media [Statute] Petroleum Storage Tank
Enf. Coordinator Rebecca Clausewitz

Violation Number
Rule Cite(s)
Violation Description

Base Penalty

>> **Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
monthly	<input checked="" type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

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 Joseph Gaber dba Codys Market & Marina and Victoria Gaber dba Codys Market & Marina
Case ID No. 5765
Req. Ent. Reference No. RN101230654
Media Petroleum Storage Tank
Violation No. 4

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				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$25	30-Aug-2006	30-Nov-2006	0.3	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to take the appropriate steps to confirm and report a suspected release. Date required is 30 days after monthly reconciliation reports indicated a suspected release. Final date is the date the Facility reported test results that confirm no release was detected.

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				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$25

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator:	CN602870552	GABER, JOSEPH	Classification: AVERAGE	Rating: 3.200
Regulated Entity:	RN101230654	CODYS MARKET & MARINA	Classification:	Site Rating: N/A
ID Number(s):				
	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION		1840144
	PETROLEUM STORAGE TANK	REGISTRATION		6615
Location:	5105 TIN TOP RD, Parker County		Rating Date: 9/1/04	Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	July 27, 2005			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	July 27, 2000 to July 27, 2005			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name: Sandy VanCleave	Phone: (512) 239-0667			

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 of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership 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 | 06/24/2003 | (277584) |
| 2 | 06/27/2005 | (381316) |
| 3 | 04/12/2002 | (IE0018002001001) |
| 4 | 11/12/2004 | (291235) |

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

- | | | |
|---------------------|--|--------------------------|
| 1. Date: 06/24/2003 | (277584) | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 37, SubChapter I 37.815(a)[G]
30 TAC Chapter 37, SubChapter I 37.815(b)[G] | |
| Description: | Failure to provide acceptable financial assurance | |
| 2. Date: 03/19/2001 | | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapterD 290.46(e)(1) | |
| Description: | Failure to have your system under the direct supervision of a certified water works operator at all times. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F) | |
| Description: | Failure to provide a sanitary control easement for the well. | |
| Self Report? | NO | Classification: Minor |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(B) | |
| Description: | Failure to provide a well casing which is a minimum 18 inches above the ground surface. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(N) | |
| Description: | Failure to provide a flow meter on the well discharge line. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(M) | |
| Description: | Failure to provide a sampling tap on the well. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(J) | |
| Description: | Failure to provide a concrete sealing block on the well. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O) | |
| Description: | Failure to protect the well with a intruder resistant fence or locked well house. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(K) | |
| Description: | Failure to provide a screened casing vent on the well. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.42(e)(3)(A) | |
| Description: | Failure to provide any form of disinfection equipment. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.42(e)(2) | |
| Description: | Failure to provide disinfection prior to storage. | |
| Self Report? | NO | Classification: Moderate |

Citation: 30 TAC Chapter 290, SubChapter D 290.46(d)(2)(A)
 Description: Failure to maintain proper chlorine residual.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(A)
 Description: Failure to provide well drillers log for the well.

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 290, SubChapter F 290.106(a)
 Description: Failure to collect and submit samples for bacteriological analysis.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)
 Description: Failure to complete annual tank inspections.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.110(d)(3)(D)
 Description: Failure to provide a DPD Chlorine test kit.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(K)
 Description: Failure to keep the well head sealed at the entry point of pump wiring.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.45(d)(2)(A)(ii)
 Description: Failure to provide a minimum pressure tank capacity of 220 gallons.

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

Compliance History

Customer/Respondent/Owner-Operator:	CN601506298	GABER, VICTORIA	Classification: AVERAGE	Rating: 3.200
Regulated Entity:	RN101230654	CODYS MARKET & MARINA	Classification:	Site Rating: N/A
ID Number(s):				
	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION		1840144
	PETROLEUM STORAGE TANK	REGISTRATION		6615
Location:	5105 TIN TOP RD, Parker County	Rating Date: 9/1/04	Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	July 27, 2005			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	July 27, 2000 to July 27, 2005			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name: Sandy VanCleave	Phone: (512) 239-0667			

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 of the site during the compliance period? | Yes |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership 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 | 06/24/2003 | (277584) |
| 2 | 06/27/2005 | (381316) |
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| 4 | 11/12/2004 | (291235) |

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

- | | | |
|---------------------|--|--------------------------|
| 1. Date: 06/24/2003 | (277584) | |
| Self Report? | NO | Classification: Moderate |
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30 TAC Chapter 37, SubChapter I 37.815(b)[G] | |
| Description: | Failure to provide acceptable financial assurance | |
| 2. Date: 03/19/2001 | | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapterD 290.46(e)(1) | |
| Description: | Failure to have your system under the direct supervision of a certified water works operator at all times. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F) | |
| Description: | Failure to provide a sanitary control easement for the well. | |
| Self Report? | NO | Classification: Minor |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(B) | |
| Description: | Failure to provide a well casing which is a minimum 18 inches above the ground surface. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(N) | |
| Description: | Failure to provide a flow meter on the well discharge line. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(M) | |
| Description: | Failure to provide a sampling tap on the well. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(J) | |
| Description: | Failure to provide a concrete sealing block on the well. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O) | |
| Description: | Failure to protect the well with a intruder resistant fence or locked well house. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(K) | |
| Description: | Failure to provide a screened casing vent on the well. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.42(e)(3)(A) | |
| Description: | Failure to provide any form of disinfection equipment. | |
| Self Report? | NO | Classification: Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.42(e)(2) | |
| Description: | Failure to provide disinfection prior to storage. | |
| Self Report? | NO | Classification: Moderate |

Citation: 30 TAC Chapter 290, SubChapter D 290.46(d)(2)(A)
 Description: Failure to maintain proper chlorine residual.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(A)
 Description: Failure to provide well drillers log for the well.

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 290, SubChapter F 290.106(a)
 Description: Failure to collect and submit samples for bacteriological analysis.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)
 Description: Failure to complete annual tank inspections.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.110(d)(3)(D)
 Description: Failure to provide a DPD Chlorine test kit.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(K)
 Description: Failure to keep the well head sealed at the entry point of pump wiring.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.45(d)(2)(A)(ii)
 Description: Failure to provide a minimum pressure tank capacity of 220 gallons.

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	§	BEFORE THE
CONCERNING	§	
JOSEPH GABER DBA CODY'S	§	
MARKET & MARINA AND	§	TEXAS COMMISSION ON
VICTORIA GABER DBA CODY'S	§	
MARKET & MARINA;	§	
RN101230654	§	ENVIRONMENTAL QUALITY

**AGREED ORDER
DOCKET NO. 2006-0682-MLM-E**

At its _____ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Joseph Gaber (“Mr. Gaber”) dba Cody’s Marker & Marina, and Victoria Gaber (“Ms. Gaber”) dba Cody’s Market & Marina (collectively “the Gabers”) under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, represented by the Litigation Division, Mr. Gaber, represented by Mr. Mark McPherson of McPherson Lawfirm, PC, and Ms. Gaber presented this agreement to the Commission.

The Gabers understand that they have 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 Gabers agree to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement 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 Gabers.

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

FINDINGS OF FACT

1. Ms. Gaber owns and Mr. Gaber owns and operates a public water system located at 5105 Tin Top Road, Weatherford, Parker County, Texas (the “PWS Facility”).

2. The PWS Facility provides water for human consumption, has 1 service connection, and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water supply system as defined in 30 TEX. ADMIN. CODE § 290.38(66).
3. Ms. Gaber owns and previously exclusively operated, and Mr. Gaber owns and has operated since February 2005, a convenience store with retail sales of gasoline located at 5105 Tin Top Road, Weatherford, Parker County, Texas (the "PST Facility").
4. The Gabers' five underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The Gabers' USTs contain a regulated petroleum substance as defined in the rules of the Commission.
5. During an investigation conducted at the PWS Facility on May 5, 2005, a TCEQ Dallas/Fort Worth Regional Office investigator documented that the Gabers:
 - a. Failed to provide disinfection equipment to maintain a free chlorine residual of 0.2 milligrams per liter (mg/L) throughout the distribution system at all times, failed to test the chlorine residual on water collected from various locations within the distribution system using a test kit which employs a diethyl-p-phenylenediamine (DPD) indicator, and failed to maintain a supply of calcium hypochlorite disinfectant on hand for use when making repairs, setting meters and disinfecting new mains prior to placing them in service. Specifically, during the investigation, a chlorine residual test conducted revealed a chlorine residual of 0.0 mg/L, the water system did not have any chlorination equipment installed at the facility, the water system did not possess a DPD indicator to test the chlorine residual, and did not have a supply of calcium hypochlorite;
 - b. Failed to secure a sanitary control easement for well No. 1;
 - c. Failed to provide a well casing 18 inches above the elevation of the finished floor of the pump house or natural ground surface, failed to provide a concrete sealing block that extends at least three feet from the exterior well casing in all directions, failed to provide a well casing vent with a 16-mesh or finer corrosion resistant screen, and failed to seal the well head with the use of gaskets or a pliable crack-resistant caulking compound. Specifically, during the investigation it was documented that the well casing was measured at approximately five inches from the ground, the well did not have a concrete sealing block, the well did not have a casing vent, and the well head was not sealed;
 - d. Failed to install a flow meter on the well pump discharge line;

- e. Failed to enclose the well in a well house with a lock or an intruder-resistant fence. Specifically, during the investigation it was documented that the well was enclosed by a circular concrete slab with an unlocked concrete lid on top of the slab;
 - f. Failed to submit "as-built" plans and specifications, prepared by a registered professional engineer well versed in the design and construction of public water systems, which describe the existing facilities, failed to provide well completion data for well No. 1, and failed to provide an accurate up-to-date map of the distribution system;
 - g. Failed to keep on file and make available for Commission review the following records: monthly operating reports, a plant operations manual, and an up-to-date chemical and microbiological plan; and
 - h. Failed to provide a pressure tank capacity of 10 gallons per connection with a minimum requirement of 220 gallons. Specifically, during the investigation it was documented that the pressure tank capacity provided was 81 gallons.
6. During an investigation conducted at the PST Facility on November 21, 2006, a TCEQ Dallas/Fort Worth Regional Office investigator documented that the Gabers:
- a. Failed to conduct effective manual or automatic inventory control procedures for all underground storage tanks at retail service stations. Specifically, the inventory was not documented to the nearest 1/8 of an inch after manually gauging the tanks;
 - b. Failed to perform an operability test on the cathodic protection system within three to six months after installation and at a subsequent frequency of at least once every three years. Specifically, an operability test had not been performed on the cathodic protection system within the past three years;
 - c. Failed to monitor all tanks in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring), failed to monitor the piping for releases at least once every month (not to exceed 35 days between each monitoring) by using one or more methods of release detection or test the piping by means of a piping tightness test conducted in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory capable of detecting any release from the piping system of 0.1 gallons per hour when the piping pressure is at 150% of normal operating pressure, and failed to test the line leak detector at least once per year for performance and operational reliability; and

- d. Failed to immediately investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TEX. ADMIN. CODE § 334.72 within 30 days or another procedure and schedule approved by the agency.
7. The Gabers received notice of the violations in paragraphs 5.a. through 5.h. on or about June 28, 2005.
8. The Gabers received notice of the violations in paragraphs 6.a. through 6.d. on or about November 27, 2006.
9. The Executive Director recognizes that Mr. Gaber has implemented the following corrective measures at the PWS Facility:
 - a. Provided disinfection equipment and ensured that the equipment is operated to maintain a free chlorine residual of 0.02 mg/L, began conducting and recording the results of disinfectant residual tests taken at representative locations in the distribution system using a test kit which employs a DPD indicator, and implemented procedures to ensure that a supply of calcium hypochlorite disinfectant is kept on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service as of January 30, 2009;
 - b. Provided a well casing 18" above the elevation of the finished floor of the pump house, installed a concrete sealing block around the well, sealed all wellheads with gaskets or a pliable crack-resistant sealing compound, and installed a well casing vent as of January 30, 2009;
 - c. Installed a flow meter on the well pump discharge line as of January 30, 2009;
 - d. Began maintaining monthly operation reports for the PWS Facility as of January 30, 2009;
 - e. Enclosed the well in a locked ventilated well house as of January 30, 2009;
 - f. Submitted an accurate and up-to-date map of the distribution system as of January 30, 2009; and
 - g. Provided a pressure tank capacity of a minimum of 220 gallons as of January 30, 2009.
10. The Executive Director recognizes that Mr. Gaber has implemented the following corrective measures at the PST Facility:

- a. Conducted a successful operability test on the cathodic protection system on November 30, 2006;
- b. Conducted a successful tightness test on the UST system on November 30, 2006;
- c. Began release detection monitoring for all USTs at the PST Facility as of December 1, 2009; and
- d. Began conducting effective manual inventory control procedures for all USTs at the PST Facility as of December 1, 2009.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1, 2, 3, and 4 the Gabers are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 5.a., the Gabers failed to provide disinfection equipment to maintain a free chlorine residual of 0.2 milligrams per liter (mg/L) throughout the distribution system at all times, failed to test the chlorine residual on water collected from various locations within the distribution system using a test kit which employs a diethyl-p-phenylenediamine (DPD) indicator, and failed to maintain a supply of calcium hypochlorite disinfectant on hand for use when making repairs, setting meters and disinfecting new mains prior to placing them in service, in violation of 30 TEX. ADMIN. CODE §§ 290.42(b)(1), 290.46(d)(2)(A), 290.110(d)(3)(C)(ii)¹ and 290.46(h).
3. As evidenced by Finding of Fact No. 5.b., the Gabers failed to secure a sanitary control easement for well No. 1, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(1)(F).
4. As evidenced by Finding of Fact No. 5.c., the Gabers failed to provide a well casing 18 inches above the elevation of the finished floor of the pump house or natural ground surface, failed to provide a concrete sealing block that extends at least three feet from the exterior well casing in all directions, failed to provide a well casing vent with a 16-mesh or finer corrosion resistant screen, and failed to seal the well head with the use of gaskets or a pliable crack-resistant caulking compound, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(B), (J) and (K).
5. As evidenced by Finding of Fact No. 5.d., the Gabers failed to install a flow meter on the well pump discharge line, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(N).

¹ 30 TEX. ADMIN. CODE § 290.110(d)(3)(C)(ii) is now found at 30 TEX. ADMIN. CODE § 290.110(d)(1)(C)(ii) amended to be effective January 9, 2008, 33 Tex. Reg. 198.

6. As evidenced by Finding of Fact No. 5.e., the Gabers failed to enclose the well in a well house with a lock or an intruder-resistant fence, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(O).
7. As evidenced by Finding of Fact No. 5.f., the Gabers failed to submit “as-built” plans and specifications, prepared by a registered professional engineer well versed in the design and construction of public water systems, which describe the existing facilities, failed to provide well completion data for well No. 1, and failed to provide an accurate up-to-date map of the distribution system, in violation of 30 TEX. ADMIN. CODE § 290.46(n)(1), (2) and (3).
8. As evidenced by Finding of Fact No. 5.g., the Gabers failed to keep on file and make available for Commission review the following records: monthly operating reports, a plant operations manual, and an up-to-date chemical and microbiological plan, in violation of 30 TEX. ADMIN. CODE §§ 290.46(f), 290.42(l) and 290.121.
9. As evidenced by Finding of Fact No. 5.h., the Gabers failed to provide a pressure tank capacity of 10 gallons per connection with a minimum requirement of 220 gallons, in violation of 30 TEX. ADMIN. CODE § 290.45(c)(1)(A)(ii).
10. As evidenced by Finding of Fact No. 6.a., the Gabers failed to conduct effective manual or automatic inventory control procedures for all underground storage tanks at retail service stations, in violation of 30 TEX. ADMIN. CODE § 334.48(c).
11. As evidenced by Finding of Fact No. 6.b., the Gabers failed to perform an operability test on the cathodic protection system within three to six months after installation and at a subsequent frequency of at least once every three years, in violation of 30 TEX. ADMIN. CODE § 334.49(c)(4)(C) and TEX. WATER CODE § 26.3475(d).
12. As evidenced by Finding of Fact No. 6.c., the Gabers failed to monitor all tanks in a manner which will detect a release at a frequency of at least once every month (not to exceed 35 days between each monitoring), failed to monitor the piping for releases at least once every month (not to exceed 35 days between each monitoring) by using one or more methods of release detection or test the piping by means of a piping tightness test conducted in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory capable of detecting any release from the piping system of 0.1 gallons per hour when the piping pressure is at 150% of normal operating pressure, and failed to test the line leak detector at least once per year for performance and operational reliability, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(1)(A), (b)(2)(A)(ii)(I), and (b)(2)(A)(i)(III), and TEX. WATER CODE § 26.3475(a) and (c)(1).

13. As evidenced by Finding of Fact No. 6.d., the Gabers failed to immediately investigate and confirm all suspected releases of regulated substances requiring reporting under 30 TEX. ADMIN. CODE § 334.72 within 30 days or another procedure and schedule approved by the agency, in violation of 30 TEX. ADMIN. CODE § 334.74.
14. Pursuant to TEX. WATER CODE § 7.051 and TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Gabers 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.
15. An administrative penalty in the amount of fourteen thousand four hundred fifty-one dollars (\$14,451.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053 and TEX. HEALTH & SAFETY CODE § 341.049. The Gabers paid four hundred fifty-one dollars (\$451.00) of the administrative penalty. The remaining amount of fourteen thousand dollars (\$14,000.00) of the administrative penalty shall be payable in 35 monthly payments of four hundred dollars (\$400.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be remitted not later than 30 days following the due date of the previous payment. If the Gabers fail to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Gabers to meet the payment schedule of this Agreed Order constitutes the failure by the Gabers to timely and satisfactorily comply with all of the terms of this Agreed Order.

ORDERING PROVISIONS

1. The Gabers are assessed an administrative penalty in the amount of fourteen thousand four hundred fifty-one dollars (\$14,451.00) as set forth in Conclusion of Law No. 15 for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Gabers'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 "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Joseph Gaber dba Cody's Marker & Marina and Victoria Gaber dba Cody's Market & Marina; Docket No. 2006-0682-MLM-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 Gabers shall undertake the following technical requirements at the PWS Facility:

a. Within 365 days after the effective date of this Agreed Order, the Gabers shall:

- i. Properly complete an interconnection with a TCEQ-approved regional water supplier that provides treated water under direct pressure and cease using the well to supply drinking water to the PWS Facility; or
- ii. Obtain a sanitary control easement that covers the land within 150 feet of the well, in accordance with 30 TEX. ADMIN. CODE § 290.41, or obtain an exception to the easement requirement pursuant to 30 TEX. ADMIN. CODE § 290.39;
- iii. Submit "as-built" plans and specifications, prepared by a registered professional engineer well versed in the design and construction of public water systems, for the existing PWS Facility, as required by 30 TEX. ADMIN. CODE § 290.46;
- iv. Obtain Commission approval of the well completion data that includes such information as the well material setting data, geological log, sealing information, disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well, as required by 30 TEX. ADMIN. CODE § 290.46, or obtain an exception to the well completion data requirement pursuant to 30 TEX. ADMIN. CODE § 290.39. The well completion data shall be submitted to:

Utility Technical Review Team
Water Supply Division, MC 153
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

The exception request shall be submitted to:

Technical Review & Oversight Team
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- v. Create and begin maintaining a thorough and up-to-date plant operations manual for operator review and reference, in accordance with 30 TEX. ADMIN. CODE § 290.41; and
 - vi. Create and begin maintaining a chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the PWS Facility will use to comply with the monitoring requirements, in accordance with 30 TEX. ADMIN. CODE § 290.121.
- b. Within 380 days after the effective date of the Commission Order, the Gabers shall certify compliance with Ordering Provision(s) 2.a.i. or 2.a.ii. through vi. 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.”

The certification and supporting documents 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:

Sid Slocum, Water Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Drive
Fort Worth, Texas 76118-6951

- c. Should the Gabers choose to interconnect with a regional water supplier pursuant to Ordering Provision 2.a.i. above, additional requirements may apply. These requirements include, but are not limited to: obtaining a valid purchase water contract with the regional water supplier, submitting plans and specifications for the interconnection with the regional water supplier to the TCEQ for review and approval, and continuing routine chemical and microbiological monitoring of the water according to the monitoring plan required by Ordering Provision 2.a.vi.
3. The provisions of this Agreed Order shall apply to and be binding upon the Gabers. The Gabers are ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the PST Facility and PWS Facility operations referenced in this Agreed Order.
4. If the Gabers fail to comply with any of the Ordering Provisions relating to the PST Facility in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Gabers's failure to comply is not a violation of this Agreed Order. The Gabers have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Gabers shall notify the Executive Director within seven days after the Gabers become 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 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 Gabers shall be made in writing to the Executive Director. Extensions are not effective until the Gabers receive 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 the Gabers if the Executive Director determines that the Gabers have not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.

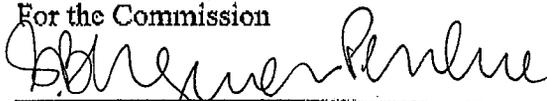
8. This Agreed Order, issued by the Commission, shall not be admissible against the Gabers in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. 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.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date is the date of hand-delivery of this Agreed Order to the Gabers, or three days after the date on which the Commission mails notice of this Agreed Order to the Gabers, whichever is earlier.

Joseph Gaber dba Cody's Marker & Marina and Victoria Gaber dba Cody's Market & Marina
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

3/10/2010

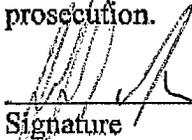
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Joseph Gaber dba Cody's Marker & Marina and Victoria Gaber dba Cody's Market & Marina. I represent that I am authorized to agree to the attached Agreed Order on behalf of Joseph Gaber dba Cody's Marker & Marina and Victoria Gaber dba Cody's Market & Marina, 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 also understand that failure to comply with the Ordering Provisions in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on the Gabers' compliance history;
- Greater scrutiny of any permit applications submitted by the Gabers;
- 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 against the Gabers;
- Automatic referral to the Attorney General's Office of any future enforcement actions against the Gabers; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.


Signature

2/3/10
Date

Joseph Gaber
Name (printed or typed)
Authorized Representative
Joseph Gaber dba Cody's Market & Marina

Owner and Operator
Title

Victoria Gaber
Signature

2-3-2010
Date

Victoria Gaber
Name (printed or typed)
Authorized Representative
Victoria Gaber dba Cody's Market & Marina

Owner
Title