

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-1449-PWS-E TCEQ ID: RN101657872 CASE NO.: 38308

RESPONDENT NAME: TLALOC Outdoors, Inc. dba Cripple Creek Restaurant

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input 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 type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Cripple Creek Restaurant, three miles west of Del Rio on United States Highway 90, Val Verde County</p> <p>TYPE OF OPERATION: Public water supply</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on March 29, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Stephen Thompson, Enforcement Division, Enforcement Team 5, MC 169, (512) 239-2558; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Carlos Flores, Owner/President, TLALOC Outdoors, Inc., 4957 West U.S. Highway 90, Del Rio, Texas 78840 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Record Review relating to this Case: August 28, 2009</p> <p>Date of NOE Relating to this Case: August 28, 2009 (NOE)</p> <p>Background Facts: This was a routine record review.</p> <p>WATER</p> <p>1) Failure to secure a sanitary control easement covering all property within 150 feet of the well [30 TEX. ADMIN. CODE § 290.41(c)(1)(F)].</p> <p>2) Failure to provide an easily readable pressure gauge for the pressure tank [30 TEX. ADMIN. CODE § 290.43(d)(2)].</p> <p>3) Failure to maintain a record of the volume of water treated each week [30 TEX. ADMIN. CODE § 290.46(f)(3)(A)(ii)(III)].</p>	<p>Total Assessed: \$446</p> <p>Total Deferred: \$89 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$119 (remaining \$238 due in 2 monthly payments of \$119 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input 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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that on October 6, 2009, documentation was submitted demonstrating that the Respondent:</p> <p>a) Began keeping a record of the volume of water treated on a weekly basis; and</p> <p>b) Installed an easily-readable pressure gauge on the pressure tank.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a) Within 90 days after the effective date of this Agreed Order, secure a sanitary control easement that covers all property within 150 feet of the Facility's well; and</p> <p>b) Within 105 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): PWS ID 2330044



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

DATES	Assigned	31-Aug-2009	Screening	4-Sep-2009	EPA Due	
	PCW	8-Sep-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	TLALOC Outdoors, Inc. dba Cripple Creek Restaurant		
Reg. Ent. Ref. No.	RN101657872		
Facility/Site Region	16-Laredo	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38308	No. of Violations	3
Docket No.	2009-1449-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Stephen Thompson
		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 \$310

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 32.0% Enhancement Subtotals 2, 3, & 7 \$99

Notes: Enhancement is due to one Notice of Violation ("NOV") that contains violations that are the same or similar to those contained in the current enforcement action, one dissimilar NOV and one agreed final enforcement order without a denial of liability.

Culpability No 0.0% Enhancement Subtotal 4 \$0

Notes: The Respondent does not meet the culpability criteria.

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

Economic Benefit 0.0% Enhancement Subtotal 6 \$0

Total EB Amounts \$24
 Approx. Cost of Compliance \$375
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal \$409

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$409

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$446

DEFERRAL 20.0% Reduction Adjustment -\$89

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

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY \$357

Screening Date 4-Sep-2009

Docket No. 2009-1449-PWS-E

PCW

Respondent TLALOC Outdoors, Inc. dba Cripple Creek Restaurant

Policy Revision 2 (September 2002)

Case ID No. 38308

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101657872

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 32%

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

N/A

Adjustment Percentage (Subtotal 3) 0%

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

N/A

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement is due to one Notice of Violation ("NOV") that contains violations that are the same or similar to those contained in the current enforcement action, one dissimilar NOV and one agreed final enforcement order without a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 32%

Screening Date 4-Sep-2009	Docket No. 2009-1449-PWS-E
Respondent TLALOC Outdoors, Inc. dba Cripple Creek Restaurant	PCW <small>Policy Revision 2 (September 2002) PCW Revision October 30, 2008</small>
Case ID No. 38308	
Reg. Ent. Reference No. RN101657872	
Media [Statute] Public Water Supply	
Enf. Coordinator Stephen Thompson	
Violation Number <input type="text" value="1"/>	
Rule Cite(s)	30 Tex. Admin. Code § 290.41(c)(1)(F)
Violation Description	Failed to secure a sanitary control easement covering all property within 150 feet of the well.
Base Penalty	\$1,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
		Major	Moderate		Minor
	Actual				
Potential			x	Percent <input type="text" value="5%"/>	

>> Programmatic Matrix

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

Matrix Notes Failure to secure a sanitary control easement could expose customers of the Facility to an insignificant amount of contaminants which would not exceed levels protective of human health.

Adjustment

\$50

Violation Events

Number of Violation Events Number of violation days

<small>mark only one with an x</small>	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	x

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

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

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

Violation Subtotal

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 TLALOC Outdoors, Inc. dba Cripple Creek Restaurant
Case ID No. 38308
Reg. Ent. Reference No. RN101657872
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$300	15-Jan-2009	1-Jun-2010	1.38	\$21	n/a	\$21
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 The delayed costs include the estimated amount to obtain a sanitary control easement and have it recorded in the county deed records. Calculated from the date of the investigation originally documenting the violation to the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$300

TOTAL

\$21

Screening Date 4-Sep-2009		Docket No. 2009-1449-PWS-E		PCW	
Respondent TLALOC Outdoors, Inc. dba Cripple Creek Restaurant			<i>Policy Revision 2 (September 2002)</i>		
Case ID No. 38308			<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No. RN101657872					
Media [Statute] Public Water Supply					
Enf. Coordinator Stephen Thompson					
Violation Number		<input type="text" value="2"/>			
Rule Cite(s)		<input type="text" value="30 Tex. Admin. Code § 290.43(d)(2)"/>			
Violation Description		<input type="text" value="Failed to provide an easily readable pressure gauge for the pressure tank."/>			
Base Penalty				<input type="text" value="\$1,000"/>	
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="25%"/>	
>> Programmatic Matrix					
		Falsification	Major	Moderate	Minor
		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="0%"/>	
Matrix Notes	<input type="text" value="Failure to provide the pressure tank with an easily readable pressure gauge would not allow the operator to ensure that the tank maintains sufficient design pressure and could expose customers to a significant amount of contaminants which would exceed levels protective of human health."/>				
Adjustment				<input type="text" value="\$750"/>	
				<input type="text" value="\$250"/>	
Violation Events					
Number of Violation Events		<input type="text" value="1"/>	<input type="text" value="7"/> Number of violation days		
<i>mark only one with an x</i>	daily	<input type="text"/>			
	weekly	<input type="text"/>			
	monthly	<input checked="" type="checkbox"/>			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
	single event	<input type="text"/>			
				Violation Base Penalty <input type="text" value="\$250"/>	
<input type="text" value="One monthly event is recommended, calculated from the date of the record review, August 28, 2009, to the date of screening, September 4, 2009."/>					
Good Faith Efforts to Comply		<input type="text" value="0.0%"/> Reduction	<input type="text" value="\$0"/>		
		Before NOV	NOV to EDRP/Settlement Offer		
Extraordinary		<input type="text"/>	<input type="text"/>		
Ordinary		<input type="text"/>	<input type="text"/>		
N/A		<input checked="" type="checkbox"/>	(mark with x)		
Notes		<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>			
Violation Subtotal				<input type="text" value="\$250"/>	
Economic Benefit (EB) for this violation					
		Statutory Limit Test			
Estimated EB Amount		<input type="text" value="\$3"/>	Violation Final Penalty Total <input type="text" value="\$330"/>		
This violation Final Assessed Penalty (adjusted for limits)				<input type="text" value="\$330"/>	

Economic Benefit Worksheet

Respondent TLALOC Outdoors, Inc. dba Cripple Creek Restaurant
Case ID No. 38308
Reg. Ent. Reference No. RN101657872
Media Public Water Supply
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Cost **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**
Item Description (No commas or \$)

Delayed Costs

Equipment	\$50	15-Jan-2009	6-Oct-2009	0.72	\$0	\$2	\$3
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs include the estimated amount to purchase and install an easily readable gauge on the pressure tank. Calculated from the date of the investigation originally documenting the violation to the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$50

TOTAL

\$3

Screening Date 4-Sep-2009	Docket No. 2009-1449-PWS-E	PCW			
Respondent TLALOC Outdoors, Inc. dba Cripple Creek Restaurant	<i>Policy Revision 2 (September 2002)</i>				
Case ID No. 38308	<i>PCW Revision October 30, 2008</i>				
Reg. Ent. Reference No. RN101657872					
Media [Statute] Public Water Supply					
Enf. Coordinator Stephen Thompson					
Violation Number <input type="text" value="3"/>					
Rule Cite(s)	30 Tex. Admin. Code § 290.46(f)(3)(A)(ii)(III)				
Violation Description	Failed to maintain a record of the volume of water treated each week.				
Base Penalty		<input type="text" value="\$1,000"/>			
>> Environmental, Property and Human Health Matrix					
OR	Harm			Percent <input type="text" value="0%"/>	
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
>> Programmatic Matrix					
		Falsification	Major	Moderate	Minor
		<input type="text"/>	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>
		Percent <input type="text" value="1%"/>			
Matrix Notes	Less than 30% of the rule requirement was not met.				
Adjustment		<input type="text" value="\$090"/>			
		<input type="text" value="\$10"/>			
Violation Events					
Number of Violation Events		<input type="text" value="1"/>		Number of violation days	
		<input type="text" value="7"/>			
<i>mark only one with an x</i>	daily	<input type="text"/>			
	weekly	<input type="text"/>			
	monthly	<input type="text"/>			
	quarterly	<input type="text"/>			
	semiannual	<input type="text"/>			
	annual	<input type="text"/>			
single event	<input checked="" type="checkbox"/>				
Violation Base Penalty		<input type="text" value="\$10"/>			
<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> One single event is recommended. </div>					
Good Faith Efforts to Comply		0.0%	Reduction <input type="text" value="\$0"/>		
		Before NOV	NOV to EOPRP/Settlement Offer		
Extraordinary	<input type="text"/>	<input type="text"/>			
Ordinary	<input type="text"/>	<input type="text"/>			
N/A	<input checked="" type="checkbox"/>	<input type="text"/> (mark with x)			
Notes	The Respondent does not meet the good faith criteria for this violation.				
Violation Subtotal		<input type="text" value="\$10"/>			
Economic Benefit (EB) for this violation		Statutory Limit Test			
Estimated EB Amount		<input type="text" value="\$1"/>		Violation Final Penalty Total	
		<input type="text" value="\$13"/>			
This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$80"/>			

Economic Benefit Worksheet

Respondent TLALOC Outdoors, Inc. dba Cripple Creek Restaurant
Case ID No. 38308
Reg. Ent. Reference No. RN101657872
Media Public Water Supply
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$25	15-Jan-2009	6-Oct-2009	0.72	\$1	n/a	\$1
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs include the estimated amount to begin maintaining a record of the volume of water treated each week. Calculated from the date of the investigation originally documenting the violation to the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$25

TOTAL

\$25

Compliance History Report

Customer/Respondent/Owner-Operator: CN603345158 TLALOC Outdoors, Inc. Classification: Rating:
Regulated Entity: RN101657872 CRIPPLE CREEK RESTAURANT Classification: Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2330044
Location: 3 MI W OF DEL RIO ON HWY 90, VAL VERDE COUNTY, TX

TCEQ Region: REGION 16 - LAREDO

Date Compliance History Prepared: August 31, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 31, 2004 to August 31, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Stephen Thompson Phone: (512) 239-2558

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? TLALOC Outdoors, Inc.
4. If Yes, who was/were the prior owner(s)/operator(s) ? Cripple Creek Restaurant, Inc.
5. When did the change(s) in owner or operator occur? 10/01/2007

Components (Multimedia) for the Site :

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

Effective Date: 11/06/2005

ADMINORDER 2004-1534-PWS-E

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)

30 TAC Chapter 290, SubChapter F 290.122(c)(1)(B)

Description: Failed to take 5 bacteriological samples the month following a positive "coliform found" sample, and failed to post public notice of the failure to collect samples.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)

30 TAC Chapter 290, SubChapter F 290.122(c)(1)(B)

Description: Failed to take repeat samples the month of the exceedance, and failed to post notice of the failure to take repeat samples.

Classification: Minor

Citation: 2A TWC Chapter 5, SubChapter A 5.702

30 TAC Chapter 290, SubChapter E 290.51(a)(3)

Description: Failed to pay PHS fees.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(b)(2)

30 TAC Chapter 290, SubChapter F 290.122(a)(1)(A)

5A THC Chapter 341, SubChapter A 341.0315(c)

Description: Exceeded the MCL for coliform, and failed to post public notice of the violation.

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

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	02/11/2005	(350414)
2	03/21/2005	(374907)
3	02/25/2009	(710273)
4	06/30/2009	(759764)
5	08/28/2009	(767748)

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

Date: 02/11/2005 (350414) CN603345158
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)(B)
Description: Failure to conduct annual tank inspections.

Date: 02/25/2009 (710273) CN603345158
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter F 290.110(d)(3)(C)(ii)
Description: Failure to use a DPD colorimetric chlorine test kit to measure the chlorine residual.
Self Report? NO Classification: Minor
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 290.43(d)(2)
Description: Failure to provide a pressure gauge on the pressure tank.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(ii)(III)
Description: Failure to maintain records of the volume of water treated weekly for systems serving < 250 connections or < 750 population using groundwater or purchasing treated water.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(4)(A)
Description: Failure to monitor the disinfectant residual in the distribution system.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TLALOC OUTDOORS, INC. DBA
CRIPPLE CREEK RESTAURANT
RN101657872

§
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§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2009-1449-PWS-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding TLALOC Outdoors, Inc. dba Cripple Creek Restaurant ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a public water supply three miles west of Del Rio on United States Highway 90 in Val Verde County, Texas (the "Facility") that has two service connections and serves at least 25 people per day for at least 60 days per year.
2. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
3. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about September 2, 2009.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of Four Hundred Forty-Six Dollars (\$446) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Nineteen Dollars (\$119) of the administrative penalty and Eighty-Nine Dollars (\$89) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Two Hundred Thirty-Eight Dollars (\$238) of the administrative penalty shall be payable in two monthly payments of One Hundred Nineteen Dollars (\$119) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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 Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
7. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
9. The Executive Director recognizes that on October 6, 2009, documentation was submitted demonstrating that the Respondent:
 - a. Began keeping a record of the volume of water treated on a weekly basis; and
 - b. Installed an easily-readable pressure gauge on the pressure tank.
10. 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.
11. 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.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to secure a sanitary control easement covering all property within 150 feet of the well, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(1)(F), as documented during a record review conducted on August 28, 2009.
2. Failed to provide an easily readable pressure gauge for the pressure tank, in violation of 30 TEX. ADMIN. CODE § 290.43(d)(2), as documented during a record review conducted on August 28, 2009.

3. Failed to maintain a record of the volume of water treated each week, in violation of 30 TEX. ADMIN. CODE § 290.46(f)(3)(A)(ii)(III), as documented during a record review conducted on August 28, 2009.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: TLALOC Outdoors, Inc. dba Cripple Creek Restaurant, Docket No. 2009-1449-PWS-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 90 days after the effective date of this Agreed Order, secure a sanitary control easement that covers all property within 150 feet of the Facility's well, in accordance with 30 TEX. ADMIN. CODE § 290.41.
 - b. Within 105 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Water Section Manager
Laredo Regional Office
Texas Commission on Environmental Quality
707 East Calton Road, Suite 304
Laredo, Texas 78041-3887

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

TLALOC Outdoors, Inc. dba Cripple Creek Restaurant

DOCKET NO. 2009-1449-PWS-E

Page 5

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Srdien
For the Executive Director

3/9/2010
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. 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, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

DAVID A. FLORES

01-12-2010

Signature

Date

CARLOS V. FLORES

OWNER - PRESIDENT

Name (Printed or typed)

Title

Authorized Representative of

TLALOC Outdoors, Inc. dba Cripple Creek Restaurant

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

