

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2009-2081-PWS-E **TCEQ ID:** RN101267631 **CASE NO.:** 38898
RESPONDENT NAME: City of Murchison

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 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: City of Murchison, on State Highway 31, 7 miles east of Athens near 3rd Street and Farm-to-Market Road 3807, Henderson County</p> <p>TYPE OF OPERATION: Public water supply</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" 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 April 19, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Andrea Linson-Mgbeoduru, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-1482; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: The Honorable Mike Hill, Mayor, City of Murchison, P.O. Box 33, Murchison, Texas 75778 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 checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: October 22, 2009</p> <p>Date of NOE Relating to this Case: November 30, 2009</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to provide emergency power that will deliver water at a rate of 0.35 gallons per minute ("gpm") per connection in the event of the loss of normal power supply [30 TEX. ADMIN. CODE § 290.45(b)(1)(D)(v) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].</p> <p>2) Failure to provide an accurate and up-to-date monitoring plan [30 TEX. ADMIN. CODE § 290.121(b)(1)(C)].</p>	<p>Total Assessed: \$635</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$635</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 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 Orders Justification: The Respondent has three repeated enforcement actions over the prior five year period for the same violation.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has submitted engineering plans and specifications to the Texas Water Development Board to secure funding for an emergency power generator.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 30 days after the effective date of this Agreed Order, provide an accurate and up-to-date monitoring plan which includes the address and schematic of the sampling sites;</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. d, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a;</p> <p>c. Within 180 days after the effective date of this Agreed Order, provide emergency power that will deliver water at a minimum of 0.35 gpm per connection; and</p> <p>d. Within 195 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 c. The certification shall be notarized by a State of Texas Notary Public.</p>

Additional ID No(s): PWS ID No. 1070027



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	7-Dec-2009	Screening	21-Dec-2009	EPA Due	
	PCW	5-Jan-2010				

RESPONDENT/FACILITY INFORMATION			
Respondent	City of Murchison		
Reg. Ent. Ref. No.	RN101267631		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38898	No. of Violations	2
Docket No.	2009-2081-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Andrea Linson-Mgbeodur
		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

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 17.0% Enhancement Subtotals 2, 3, & 7

Notes: Enhancement due to three Notices of Violation with violations that are the same as those in the current enforcement action and one NOV with dissimilar violations.

Culpability No Subtotal 4

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5

Economic Benefit 0.0% Enhancement* Subtotal 6

Total EB Amounts	\$6,591
Approx. Cost of Compliance	\$85,100

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Reduction Adjustment

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

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY

Screening Date 21-Dec-2009

Docket No. 2009-2081-PWS-E

PCW

Respondent City of Murchison

Policy Revision 2 (September 2002)

Case ID No. 38898

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101267631

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson-Mgbeoduru

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	3	15%
	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 judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<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) 17%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement due to three Notices of Violation with violations that are the same as those in the current enforcement action and one NOV with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 17%

Screening Date 21-Dec-2009

Docket No. 2009-2081-PWS-E

PCW

Respondent City of Murchison

Policy Revision 2 (September 2002)

Case ID No. 38898

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101267631

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson-Mgbeoduru

Violation Number

1

Rule Cite(s)

30 Tex. Admin. Code § 290.45(b)(1)(D)(v) and Tex. Health & Safety Code § 341.0315(c)

Violation Description

Failed to provide emergency power that will deliver water at a rate of 0.35 gallons per minute ("gpm") per connection in the event of the loss of normal power supply. Specifically, at the time of the investigation, it was documented that the Respondent failed to provide an emergency power source, such as a backup generator, which is required for facilities that have no elevated storage and serve 250 or more service connections.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	X			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Without emergency power, customers of the Facility could experience water outages and the Facility's ability to provide a safe and reliable water supply could be compromised.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 2 Number of violation days 61

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$500

Two monthly events are recommended, calculated from the investigation date, October 22, 2009, to the screening date, December 21, 2009.

Good Faith Efforts to Comply

0.0% Reduction \$0

Before NOV NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

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

Violation Subtotal \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6,586

Violation Final Penalty Total \$585

This violation Final Assessed Penalty (adjusted for limits) \$585

Economic Benefit Worksheet

Respondent City of Murchison
Case ID No. 38898
Reg. Ent. Reference No. RN101267631
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	\$85,000	22-Oct-2009	30-Nov-2010	1.11	\$314	\$6,272	\$6,586
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the estimated amount to purchase a generator for use as an emergency power source that will deliver water at a rate of 0.35 gpm per connection in the event of the loss of normal power supply. The date required is the investigation date. 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				0.00	\$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

\$85,000

TOTAL

\$6,586

Screening Date 21-Dec-2009

Docket No. 2009-2081-PWS-E

PCW

Respondent City of Murchison

Policy Revision 2 (September 2002)

Case ID No. 38898

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101267631

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson-Mgbeoduru

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 290.121(b)(1)(C)

Violation Description

Failed to provide an accurate and up-to-date monitoring plan. Specifically, at the time of the investigation, it was documented that the monitoring plan did not include the address of each sampling site in the distribution system nor were the sampling sites designated on a distribution system schematic.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
			X

Percent 1%

Matrix Notes

Less than 30% of the rule requirement was not met.

Adjustment \$990

\$10

Violation Events

Number of Violation Events 1 Number of violation days 61

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

Violation Base Penalty \$10

One single event is recommended.

Good Faith Efforts to Comply

	0.0% Reduction	
	Before NOV	NOV to EDFRP/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 \$10

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$12

This violation Final Assessed Penalty (adjusted for limits) \$50

Economic Benefit Worksheet

Respondent City of Murchison
Case ID No. 38898
Reg. Ent. Reference No. RN101267631
Media Public Water Supply
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$100	22-Oct-2009	31-Jul-2010	0.77	\$0	\$5	\$5
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: The delayed cost includes the estimated amount necessary to update the map of the distribution system, including but not limited to indicating the sampling locations that are representative of the distribution system. The date required is the investigation date. 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				0.00	\$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

\$100

TOTAL

\$5

Compliance History Report

Customer/Respondent/Owner-Operator: CN600698187 City of Murchison Classification: AVERAGE Rating: 2.10
 Regulated Entity: RN101267631 CITY OF MURCHISON Classification: Site Rating:
 ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1070027
 WATER LICENSING LICENSE 1070027
 Location: LOCATED SH 31 7 MI EAST OF ATHENS NEAR 3RD STREET AND FARM-TO-MARKET ROAD 3807 IN HENDERSON COUNTY, TEXAS
 TCEQ Region: REGION 05 - TYLER
 Date Compliance History Prepared: December 22, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 21, 2004 to December 21, 2009

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

Name: Andrea Linson-Mgbeoduru Phone: 512-239-1482

Site Compliance History Components

- | | |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership/operator of the site during the compliance period? | No |
| 3. If Yes, who is the current owner/operator? | N/A |
| 4. If Yes, who was/were the prior owner(s)/operator(s) ? | N/A |
| 5. When did the change(s) in owner or operator occur? | N/A |

Components (Multimedia) for the Site :

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

N/A

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

N/A

C. Chronic excessive emissions events.

N/A

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

- | | | |
|---|------------|----------|
| 1 | 02/01/2008 | (616217) |
| 2 | 05/13/2008 | (654905) |
| 3 | 05/22/2009 | (745688) |
| 4 | 11/16/2009 | (782044) |
| 5 | 11/30/2009 | (781572) |

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

~~Date: 02/07/2008 (616217) CN600698187~~

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(4)(C)

Description: The vent screens on the door to the chlorination room are missing due to oxidation.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(D)(v)

Description: Failure to provide an alternate power source.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)

Description: Failure to obtain a sanitary control easement for well #1 and well #2.

Self Report? NO Classification: Minor

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

Description: Failure to perform customer service inspections on connections which have automatic sprinkler systems and the laundramat.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter F 290.121

Description: Failure to maintain the monitoring plan up-to-date.

Date: 03/18/2009 (736386) CN600698187

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(D)(v)

Description: Failure to provide an alternate power source.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)

Description: Failure to obtain a sanitary control easement for well #1 and well #2.

Self Report? NO Classification: Minor

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

Description: Failure to perform customer service inspections on connections which have automatic sprinkler systems and the laundramat.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter F 290.121

Description: Failure to maintain the monitoring plan up-to-date.

Self Report? NO Classification: Minor

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

Description: Failure to flush all dead-end mains monthly, or more often if required, to maintain water quality.

Self Report? NO Classification: Minor

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

Description: Failure to prepare and maintain a map of the distribution system so that valves and mains may be easily located during emergencies.

Date: 05/26/2009 (745688) CN600698187

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(D)(v)

Description: Failure to provide an alternate power source.

Date: 11/20/2009 (782044) CN600698187

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(B)(vi)

Description: Failure to maintain copies of annual Backflow Assembly test reports.

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
CITY OF MURCHISON
RN101267631**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-2081-PWS-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Murchison ("the City") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the City presented this agreement to the Commission.

The City understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the City agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the City.

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

I. FINDINGS OF FACT

1. The City owns and operates a public water supply on State Highway 31, seven miles east of Athens near 3rd Street and Farm-to-Market Road 3807, Henderson County, Texas (the "Facility") that has approximately 340 service connections and serves at least 25 people per day for at least 60 days per year.

2. During an investigation on October 22, 2009, TCEQ staff documented that the City did not have an alternate source of power that will deliver water at a rate of 0.35 gallons per minute (“gpm”) per connection in the event of the loss of normal power supply. Specifically, at the time of the investigation, it was documented that the City failed to provide an emergency power source, such as a backup generator, which is required for facilities that have no elevated storage and serve 250 or more service connections
3. During an investigation on October 22, 2009, TCEQ staff documented that the City did not have an accurate and up-to-date monitoring plan. Specifically, at the time of the investigation, it was documented that the monitoring plan did not include the address of each sampling site in the distribution system nor were the sampling sites designated on a distribution system schematic.
4. The City received notice of the violations on December 1, 2009.
5. The Executive Director recognizes that the Respondent has submitted engineering plans and specifications to the Texas Water Development Board to secure funding for an emergency power generator.

II. CONCLUSIONS OF LAW

1. The City is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, the City failed to provide emergency power that will deliver water at a rate of 0.35 gpm per connection in the event of the loss of normal power supply, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(D)(v) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
3. As evidenced by Findings of Fact No. 3, the City failed to provide an accurate and up-to-date monitoring plan, in violation of 30 TEX. ADMIN. CODE § 290.121(b)(1)(C).
4. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the City 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.
5. An administrative penalty in the amount of Six Hundred Thirty-Five Dollars (\$635) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The City has paid the Six Hundred Thirty-Five Dollar (\$635) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The City is assessed an administrative penalty in the amount of Six Hundred Thirty-Five Dollars (\$635) as set forth in Section II, Paragraph 5 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Murchison, Docket No. 2009-2081-PWS-E" to:

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

2. The City shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, provide an accurate and up-to-date monitoring plan which includes the address and schematic of the sampling sites, in accordance with 30 TEX. ADMIN. CODE § 290.121;
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.d below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a;
 - c. Within 180 days after the effective date of this Agreed Order, provide emergency power that will deliver water at a minimum of 0.35 gpm per connection, as required by 30 TEX. ADMIN. CODE § 290.45; and
 - d. Within 195 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.c. 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
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3734

3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City 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 City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas (“OAG”) for further enforcement proceedings without notice to the City if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
6. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
7. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission’s jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted

by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.

9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Szolter
For the Executive Director

3/30/2010
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of City of Murchison. I am authorized to agree to the attached Agreed Order on behalf of City of Murchison, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, City of Murchison waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

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

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

Mike Hill
Signature

2-18-10
Date

MIKE HILL
Name (Printed or typed)
Authorized Representative of
City of Murchison

MAYOR
Title

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.