

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-0099-PWS-E TCEQ ID: RN101265882 CASE NO.: 39020
RESPONDENT NAME: Terra Southwest Inc.

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: East Ponder Estates, located at the end of Chase Road, northeast of the intersection of Farm-to-Market Road 2449 and Florence Road, Denton 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 May 24, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Yuliya Dunaway, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4077; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Jim Presley, Registered Agent/Owner, Terra Southwest Inc., 1125 G University Drive, Denton, Texas 76201 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: November 10, 2009</p> <p>Date of NOV/NOE Relating to this Case: January 12, 2010 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to provide a well capacity of 0.6 gallons per minute ("gpm") per connection [30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(i) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].</p> <p>2) Failure to maintain records of water works operation and maintenance activities and make them available to Commission personnel at the time of the investigation [30 TEX. ADMIN. CODE § 290.46(f)(2), (f)(3)(D)(ii), and (f)(3)(E)(i)].</p> <p>3) Failure to secure a sanitary control easement covering all property within 150 feet of the Facility's new well [30 TEX. ADMIN. CODE § 290.41(c)(1)(F)].</p> <p>4) Failure to post a legible sign at the Facility that contains the name of the water supply and emergency telephone numbers where a responsible official can be contacted [30 TEX. ADMIN. CODE § 290.46(t)].</p> <p>5) Failure to maintain a plant operations manual for operator review and reference at the Facility and make it available to Commission personnel at the time of the investigation [30 TEX. ADMIN. CODE § 290.42(l)].</p>	<p>Total Assessed: \$392</p> <p>Total Deferred: \$78 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$314</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 the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. As of December 17, 2009, provided a copy of the annual tank inspection report; and</p> <p>b. As of December 17, 2009, provided a copy of the plant operations manual.</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:</p> <p>i. Post a legible system ownership sign at the Facility; and</p> <p>ii. Compile and begin maintaining monthly operating reports.</p> <p>b. Within 45 days after the effective date of this Agreed Order, submit written certification that demonstrates compliance with Ordering Provision a.;</p> <p>c. Within 90 days after the effective date of this Agreed Order, obtain a sanitary control easement that covers the land within 150 feet of the well, or obtain an exception to the rule;</p> <p>d. Within 105 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation to demonstrate compliance with Ordering Provision c.;</p> <p>e. Within 180 days after the effective date of this Agreed Order, provide a well capacity of 0.6 gpm per connection; and</p> <p>f. 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 e.</p> <p>Additional ID No(s): PWS ID No. 0610161</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	11-Jan-2010		
	PCW	14-Jan-2010	Screening	14-Jan-2010
			EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	Terra Southwest Inc.		
Reg. Ent. Ref. No.	RN101265882		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39020	No. of Violations	5
Docket No.	2010-0099-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Yullya Dunaway
		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 Enhancement Subtotals 2, 3, & 7

Notes

Culpability Enhancement Subtotal 4

Notes

Good Faith Effort to Comply Total Adjustments Subtotal 5

Economic Benefit Enhancement* Subtotal 6

Total EB Amounts
 Approx. Cost of Compliance *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 indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

PAYABLE PENALTY

Screening Date 14-Jan-2010

Docket No. 2010-0099-PWS-E

PCW

Respondent Terra Southwest Inc.

Policy Revision 2 (September 2002)

Case ID No. 39020

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101265882

Media [Statute] Public Water Supply

Enf. Coordinator Yuliya Dunaway

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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 5%

>> 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

The penalty enhancement is due to one prior NOV for violations that are the same as or similar to the violations in the current enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 14-Jan-2010

Docket No. 2010-0099-PWS-E

PCW

Respondent Terra Southwest Inc.

Policy Revision 2 (September 2002)

Case ID No. 39020

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN101265882

Media [Statute] Public Water Supply

Enf. Coordinator Yullya Dunaway

Violation Number

1

Rule Cite(s)

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

Violation Description

Failed to provide a well capacity of 0.6 gallons per minute ("gpm") per connection. Specifically, the Facility is required to provide a well capacity of 43.2 gpm based on its 72 connections. However, at the time of the investigation, the Facility was providing a total of 23.5 gpm of well capacity, which is a 46% deficiency.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential		X		

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Failing to provide adequate well capacity may cause low pressure and back siphonage problems exposing customers to a significant amount of contaminants that would not exceed levels protective of human health.

Adjustment \$900

\$100

Violation Events

Number of Violation Events 1 Number of violation days 65

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$100

One quarterly event is recommended from the date of the investigation, November 10, 2009, to the date of screening, January 14, 2010.

Good Faith Efforts to Comply

	0.0% Reduction	
	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

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

Violation Subtotal \$100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$137

Violation Final Penalty Total \$105

This violation Final Assessed Penalty (adjusted for limits) \$105

Economic Benefit Worksheet

Respondent Terra Southwest Inc.
Case ID No. 39020
Reg. Ent. Reference No. RN101265882
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
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No commas or \$

Delayed Costs

Equipment	\$1,500	10-Nov-2009	1-Mar-2011	1.30	\$7	\$130	\$137
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 provide a well capacity of 0.6 gpm per connection, calculated from the date of the investigation 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

\$1,500

TOTAL

\$137

Screening Date 14-Jan-2010

Docket No. 2010-0099-PWS-E

PCW

Respondent Terra Southwest Inc.

Policy Revision 2 (September 2002)

Case ID No. 39020

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101265882

Media [Statute] Public Water Supply

Enf. Coordinator Yuliya Dunaway

Violation Number 2

Rule Cite(s)

30 Tex. Admn. Code § 290.46(f)(2), (f)(3)(D)(ii), and (f)(3)(E)(i)

Violation Description

Failed to maintain records of water works operation and maintenance activities and make them available to Commission personnel at the time of the investigation. Specifically, at the time of the investigation, the Facility's annual tank inspection reports and monthly operating reports were not available for review.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent
	Release	Major	Moderate	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
				x	
Less than 30% of the rule requirements were not met.					

Adjustment \$990

\$10

Violation Events

Number of Violation Events 1 65 Number of violation days

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

\$0

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 \$6

Violation Final Penalty Total \$11

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

Economic Benefit Worksheet

Respondent: Terra Southwest Inc.
Case ID No.: 39020
Reg. Ent. Reference No.: RN101265882
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	10-Nov-2009	1-Oct-2010	0.89	\$0	\$6	\$6
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)	\$50	10-Nov-2009	17-Dec-2009	0.10	\$0	n/a	\$0

Notes for DELAYED costs: The delayed costs include the estimated amount to develop and properly maintain monthly operating reports at the Facility, calculated from the date of the investigation to the estimated date of compliance. The delayed costs include the estimated amount to properly maintain the annual tank inspection reports at the Facility, calculated from the date of the investigation 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	\$150	TOTAL	\$6
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Screening Date 14-Jan-2010

Docket No. 2010-0099-PWS-E

PCW

Respondent Terra Southwest Inc.

Policy Revision 2 (September 2002)

Case ID No. 39020

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101265882

Media [Statute] Public Water Supply

Enf. Coordinator Yuliya Dunaway

Violation Number 3

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 Facility's new well.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				5%
Potential			x	

>> Programmatic Matrix

Matrix Notes	Harm			Percent
	Major	Moderate	Minor	
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.				0%

Adjustment \$950

\$50

Violation Events

Number of Violation Events 1 Number of violation days 65

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

Violation Base Penalty \$50

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 \$50

Economic Benefit (EB) for this violation

Estimated EB Amount \$11

Statutory Limit Test

Violation Final Penalty Total \$53

This violation Final Assessed Penalty (adjusted for limits) \$53

Economic Benefit Worksheet

Respondent Terra Southwest Inc.
Case ID No. 39020
Reg. Ent. Reference No. RN101265882
Media Public Water Supply
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$200	10-Nov-2009	1-Dec-2010	1.06	\$11	n/a	\$11
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 secure a sanitary control easement and file the easement in the county courthouse, calculated from the date of the investigation to the estimated date of compliance.

Avoided Costs

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

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$200

TOTAL

\$11

Screening Date 14-Jan-2010

Docket No. 2010-0099-PWS-E

PCW

Respondent Terra Southwest Inc.

Policy Revision 2 (September 2002)

Case ID No. 39020

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101265882

Media [Statute] Public Water Supply

Enf. Coordinator Yuliya Dunaway

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 290.46(t)

Violation Description

Failed to post a legible sign at the Facility that contains the name of the water supply and emergency telephone numbers where a responsible official can be contacted.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirements were not met.

Adjustment \$900

\$100

Violation Events

Number of Violation Events 1

65 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$100

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$12

Violation Final Penalty Total \$105

This violation Final Assessed Penalty (adjusted for limits) \$105

Economic Benefit Worksheet

Respondent Terra Southwest Inc.
Case ID No. 39020
Reg. Ent. Reference No. RN101265882
Media 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
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No commas or \$.

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$200	10-Nov-2009	1-Oct-2010	0.89	\$1	\$12	\$12
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 post a legible ownership sign at the Facility, calculated from the date of the investigation 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

\$200

TOTAL

\$12

Screening Date 14-Jan-2010

Docket No. 2010-0099-PWS-E

PCW

Respondent Terra Southwest Inc.

Policy Revision 2 (September 2002)

Case ID No. 39020

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101265882

Media [Statute] Public Water Supply

Enf. Coordinator Yuliya Dunaway

Violation Number 5

Rule Cite(s)

30 Tex. Adm'n. Code § 290.42(l)

Violation Description

Failed to maintain a plant operations manual for operator review and reference at the Facility and make it available to Commission personnel at the time of the investigation.

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 10%

Matrix Notes

100% of the rule requirements were not met.

Adjustment \$900

\$100

Violation Events

Number of Violation Events 1

37 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$100

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$25

Before NOV NOV to EDRP/Settlement Offer

Extraordinary	
Ordinary	x
N/A	(mark with x)

Notes: The Respondent achieved compliance as of December 17, 2009.

Violation Subtotal \$75

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$80

This violation Final Assessed Penalty (adjusted for limits) \$80

Economic Benefit Worksheet

Respondent Terra Southwest Inc.
Case ID No. 39020
Reg. Ent. Reference No. RN101265882
Media Public Water Supply
Violation No. 5

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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$50	10-Nov-2009	17-Dec-2009	0.10	\$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 properly maintain a plant operations manual at the Facility, calculated from the date of the investigation 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	\$0
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Compliance History Report

Customer/Respondent/Owner-Operator:	CN600627905 Terra Southwest Inc.	Classification:	Rating:
Regulated Entity:	RN101265882 EAST PONDER ESTATES	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY WATER LICENSING	REGISTRATION LICENSE	0610161 0610161
Location:	END OF CHASE ROAD, NE OF FM 2449 AND FLORENCE ROAD, DENTON COUNTY, TX		
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	January 11, 2010		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	January 11, 2005 to January 11, 2010		

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

Name: Yuliya Dunaway Phone: 210-403-4077

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?	<u>N/A</u>
4. If Yes, who was/were the prior owner(s)/operator(s) ?	<u>N/A</u>
5. When did the change(s) in owner or operator occur?	<u>N/A</u>

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	01/12/2006	(450973)
2	07/17/2006	(485448)
3	02/29/2008	(636828)
4	10/01/2008	(702266)
5	07/30/2009	(762678)
6	01/06/2010	(780806)

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

Date:	01/09/2006 (450973)	CN600627905
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 290, SubChapter D 290.42(d)(7)(H) 30 TAC Chapter 290, SubChapter D 290.42(e)(4)(B) 30 TAC Chapter 290, SubChapter D 290.42(e)(4)(C) 30 TAC Chapter 290, SubChapter D 290.42(e)(5)	
Description:	Violation of: §290.42(e)(5) Failure to house the hypochlorination containers.	
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 290, SubChapter F 290.121	
Description:	Violation of: §290.121(G) Failure to complete and provide a monitoring plan for the East Ponder Estates public water system.	

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)
30 TAC Chapter 290, SubChapter D 290.46(f)(3)(D)(ii)
30 TAC Chapter 290, SubChapter D 290.46(m)(1)
Description: Violation of: §290.46(m)(1)(B)
Failure to maintain the external protective coating on the pressure tank.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(A)(i)
30 TAC Chapter 290, SubChapter D 290.45(b)(1)(B)(i)
30 TAC Chapter 290, SubChapter D 290.45(b)(1)(C)(i)
30 TAC Chapter 290, SubChapter D 290.45(b)(1)(D)(i)
30 TAC Chapter 290, SubChapter D 290.45(b)(1)(E)(i)
30 TAC Chapter 290, SubChapter D 290.45(b)(1)(F)(i)
30 TAC Chapter 290, SubChapter D 290.45(c)(1)(A)(i)
30 TAC Chapter 290, SubChapter D 290.45(c)(1)(B)(i)
30 TAC Chapter 290, SubChapter D 290.45(d)(1)
30 TAC Chapter 290, SubChapter D 290.45(d)(2)(A)(i)
30 TAC Chapter 290, SubChapter D 290.45(d)(2)(B)(i)
30 TAC Chapter 290, SubChapter D 290.45(f)(4)
30 TAC Chapter 290, SubChapter D 290.45(f)(6)
Description: Violation of: 290.45(b)(1)(D)(i)
Failure to provide a well production capacity of 0.6 gpm per connection.

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
TERRA SOUTHWEST INC.
RN101265882**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2010-0099-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 Terra Southwest Inc. ("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 located at the end of Chase Road, northeast of the intersection of Farm-to-Market Road 2449 and Florence Road, Denton County, Texas (the "Facility") that has approximately 72 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 January 17, 2010.
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 Three Hundred Ninety-Two Dollars (\$392) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Hundred Fourteen Dollars (\$314) of the administrative penalty and Seventy-Eight Dollars (\$78) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon

full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

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 recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. As of December 17, 2009, provided a copy of the annual tank inspection report; and
 - b. As of December 17, 2009, provided a copy of the plant operations manual.
9. 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.
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 provide a well capacity of 0.6 gallons per minute ("gpm") per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(i) and TEX. HEALTH & SAFETY CODE § 341.0315(c), as documented during an investigation conducted on November 10, 2009.
2. Failed to maintain records of water works operation and maintenance activities and make them available to Commission personnel at the time of the investigation, in violation of 30 TEX. ADMIN. CODE § 290.46(f)(2), (f)(3)(D)(ii), and (f)(3)(E)(i), as documented during an investigation conducted on November 10, 2009.
3. Failed to secure a sanitary control easement covering all property within 150 feet of the Facility's new well, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(1)(F), as documented during an investigation conducted on November 10, 2009.
4. Failed to post a legible sign at the Facility that contains the name of the water supply and emergency telephone numbers where a responsible official can be contacted, in violation of 30

TEX. ADMIN. CODE § 290.46(t), as documented during an investigation conducted on November 10, 2009.

5. Failed to maintain a plant operations manual for operator review and reference at the Facility and make it available to Commission personnel at the time of the investigation, in violation of 30 TEX. ADMIN. CODE § 290.42(l), as documented during an investigation conducted on November 10, 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: Terra Southwest Inc., Docket No. 2010-0099-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 30 days after the effective date of this Agreed Order:
 - i. Post a legible system ownership sign at the Facility, as required by 30 TEX. ADMIN. CODE § 290.46: and
 - ii. Compile and begin maintaining monthly operating reports, as required by 30 TEX. ADMIN. CODE § 290.46.
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance as described below in Ordering Provision No. 2.f, that demonstrates compliance with Ordering Provision No. 2.a.
 - c. Within 90 days after the effective date of this Agreed Order, obtain a sanitary control easement that covers the land within 150 feet of the well, as required by 30 TEX. ADMIN. CODE § 290.41 or obtain an exception to the rule, as required by 30 TEX. ADMIN. CODE § 290.39.

- d. Within 105 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.f below, and include detailed supporting documentation to demonstrate compliance with Ordering Provision No. 2.c.
- e. Within 180 days after the effective date of this Agreed Order, provide a well capacity of 0.6 gpm per connection, as required by 30 TEX. ADMIN. CODE § 290.45.
- f. 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.e. 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
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

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.

Terra Southwest Inc.
DOCKET NO. 2010-0099-PWS-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Joli Ordus
For the Executive Director

5/3/2010
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.

Jim Presley
Signature

3-5-10
Date

Jim Presley
Name (Printed or typed)
Authorized Representative of
Terra Southwest Inc.

OWNER
Title

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