

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2009-1817-PWS-E **TCEQ ID:** RN102321486 **CASE NO.:** 38668
RESPONDENT NAME: Lisa Lowery Trust

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: Golden Spur Sports Bar, 1005 Laswell Lane, Comal County</p> <p>TYPE OF OPERATION: Restaurant and bar with a 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 May 24, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Rebecca Clausewitz, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4012; Ms. Laurie Baves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Dr. Rudi Rodriguez, Trustee, Lisa Lowery Trust, C/O Mr. Xavier Escobedo, 318 Northaven, San Antonio, Texas 78229-3608 Ms. Janine K. Egerton, Trustee, Lisa Lowery Trust, C/O Mr. Xavier Escobedo, 318 Northaven, San Antonio, Texas 78229-3608 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 Investigation Relating to this Case: June 5, 2009</p> <p>Date of NOE Relating to this Case: June 5, 2009</p> <p>Background Facts: This was a records review.</p> <p>WATER</p> <p>1) Failure to collect routine distribution water samples for coliform analysis and failed to provide notice to persons served by the Facility regarding the failure to conduct routine coliform monitoring [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.033(d)].</p> <p>2) Exceeded the maximum contaminant level ("MCL") for total coliform and failed to provide notice to persons served by the Facility regarding the exceedance of the MCL for total coliform [30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(B)].</p> <p>3) Failure to collect at least five distribution coliform samples the month following a total coliform-positive result [30 TEX. ADMIN. CODE § 290.109(c)(2)(F)].</p>	<p>Total Assessed: \$2,382</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: \$204 (remaining \$2,178 due in 11 monthly payments of \$198 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>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:</p> <p>a. Repaired the chlorinator as of October 31, 2008;</p> <p>b. Achieved compliance with all coliform sampling and monitoring requirements as of June 1, 2009, and;</p> <p>c. Sold the Facility on August 10, 2009.</p>

Additional ID No(s): PWS ID No. 0460213



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	12-Oct-2009	Screening	6-Nov-2009	EPA Due	31-May-2009
	PCW	25-Jan-2010				

RESPONDENT/FACILITY INFORMATION

Respondent	Lisa Lowery Trust		
Reg. Ent. Ref. No.	RN102321486		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	38668	No. of Violations	3
Docket No.	2009-1817-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rebecca Clausewitz
		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: The compliance history enhancement is due to seven prior Notices of Violation (NOVs) containing violations that are the same as the violations in the current enforcement action, and for one prior NOV containing dissimilar violations.

Culpability Enhancement **Subtotal 4**

Notes: The Respondent does not meet the culpability criteria.

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: An enhancement is recommended for recovery of the avoided costs of compliance.

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 6-Nov-2009

Docket No. 2009-1817-PWS-E

PCW

Respondent Lisa Lowery Trust

Policy Revision 2 (September 2002)

Case ID No. 38668

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102321486

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	7	35%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were 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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

The compliance history enhancement is due to seven prior Notices of Violation (NOVs) containing violations that are the same as the violations in the current enforcement action, and for one prior NOV containing dissimilar violations.

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

Screening Date 6-Nov-2009

Docket No. 2009-1817-PWS-E

PCW

Respondent Lisa Lowery Trust

Policy Revision 2 (September 2002)

Case ID No. 38668

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN102321486

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and Tex. Health & Safety Code § 341.033(d)

Violation Description

Failed to collect routine distribution water samples for coliform analysis during the months of December 2006 and June, July, August, and December 2008 and failed to provide notice to persons served by the Facility regarding failure to conduct routine coliform sampling during the months of December 2006 and June, July, and August 2008.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes

Failure to perform routine monitoring and failure to provide notice could result in employees and customers of the Facility being exposed to significant amounts of undetected contaminants, which would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 5 Number of violation days 123

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

Violation Base Penalty \$1,250

Five monthly events are recommended.

Good Faith Efforts to Comply

25.0% Reduction \$312

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

Notes The Respondent achieved compliance with this violation as of June 1, 2009.

Violation Subtotal \$938

Economic Benefit (EB) for this violation

Estimated EB Amount \$167

Statutory Limit Test

Violation Final Penalty Total \$1,600

This violation Final Assessed Penalty (adjusted for limits) \$1,600

Economic Benefit Worksheet

Respondent Lisa Lowery Trust
Case ID No. 38688
Reg. Ent. Reference No. RN102321486
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$145	1-Dec-2006	31-Dec-2008	3.00	\$22	\$145	\$167
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The one-time avoided cost includes the estimated amount to conduct routine monthly sampling (\$25 per month) and the estimated amount to provide public notice to the Facility's employees and customers (\$5 per month), calculated for the months in which routine sampling and/or notice did not occur.

Approx. Cost of Compliance

\$145

TOTAL

\$167

Screening Date 6-Nov-2009

Docket No. 2009-1817-PWS-E

PCW

Respondent Lisa Lowery Trust

Policy Revision 2: September 2003

Case ID No. 38668

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102321486

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(f)(3) and 290.122(b)(2)(B)

Violation Description Failed to comply with the maximum contaminant level ("MCL") for total coliform and failed to provide notice to persons served by the Facility regarding the exceedance of the MCL for total coliform during the month of October 2008.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		x		25%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes As a result of the exceedance, customers and employees of the Facility have been exposed to significant amounts of contaminants, which do not exceed levels that are protective of human health.

Adjustment \$750 \$250

Violation Events

Number of Violation Events 1 31 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$250

One monthly event is recommended.

Good Faith Efforts to Comply

	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 \$250

Economic Benefit (EB) for this violation

Estimated EB Amount \$6

Statutory Limit Test

Violation Final Penalty Total \$391

This violation Final Assessed Penalty (adjusted for limits) \$391

Economic Benefit Worksheet

Respondent Lisa Lowery Trust
Case ID No. 38668
Reg. Ent. Reference No. RN102321488
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	\$200	1-Oct-2008	31-Oct-2008	0.08	\$0	\$1	\$1
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: The delayed cost includes the estimated amount to repair the automatic chlorinator, calculated from the first day of the month in which the exceedance was documented, to the date the repaired chlorinator was installed.

Avoided Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]	\$5	1-Oct-2008	31-Oct-2008	1.00	\$0	\$5	\$5
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs: The one-time avoided cost includes the estimated amount to provide public notice to the Facility's employees and customers, calculated for the months in which routine sampling and/or notice did not occur.

Approx. Cost of Compliance	\$205	TOTAL	\$6
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Screening Date 6-Nov-2009

Docket No. 2009-1817-PWS-E

PCW

Respondent Lisa Lowery Trust

Policy Revision 2 (September 2002)

Case ID No. 38668

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102321486

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 290.109(c)(2)(F)

Violation Description * Failed to collect at least five distribution coliform samples the month following a total-coliform positive result during November 2008.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

	Major	Moderate	Minor
Falsification			

Percent 0%

Matrix Notes

Failure to perform increased routine coliform monitoring could result in employees and customers of the Facility being exposed to significant amounts of undetected contaminants, which would exceed levels that are protective of human health.

Adjustment \$760

\$250

Violation Events

Number of Violation Events 1

30 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$250

One monthly event is recommended.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDRP/Settlement Offer \$0

Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$125

Violation Final Penalty Total \$391

This violation Final Assessed Penalty (adjusted for limits) \$391

Economic Benefit Worksheet

Respondent Lisa Lowery Trust
Case ID No. 38608
Reg. Ent. Reference No. RN102321486
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**
Item Description: No commas or \$

Delayed Costs

Equipment			0.00	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0
Engineering/construction			0.00	\$0	\$0	\$0
Land			0.00	\$0	n/a	\$0
Record Keeping System			0.00	\$0	n/a	\$0
Training/Sampling			0.00	\$0	n/a	\$0
Remediation/Disposal			0.00	\$0	n/a	\$0
Permit Costs			0.00	\$0	n/a	\$0
Other (as needed)			0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal			0.00	\$0	\$0	\$0
Personnel			0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.00	\$0	\$0	\$0
Supplies/equipment			0.00	\$0	\$0	\$0
Financial Assurance [2]			0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$125	1-Nov-2008	30-Nov-2008	0.00	\$0	\$125
Other (as needed)			0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount to conduct increased routine sampling, which includes analysis of five samples (\$25 per sample), calculated for the month in which increased routine sampling did not occur.

Approx. Cost of Compliance

\$125

TOTAL

\$125

Compliance History Report

Customer/Respondent/Owner-Operator: CN603460817 Lisa Lowery Trust Classification: Rating:
Regulated Entity: RN102321486 THE GOLDEN SPUR SPORTS BAR Classification: Site Rating:
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0460213
Location: 1005 LASWELL LN, COMAL COUNTY, TX
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: October 12, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: October 12, 2004 to October 12, 2009

TCEQ Staff Member to Contact for Additional information Regarding this Compliance History:
Name: Rebecca Clausewitz Phone: (210) 403-4012

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
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? Laswell Investments, LLC
4. If Yes, who was/were the prior owner(s)/operator(s)? Lisa Lowery Trust
5. When did the change(s) in owner or operator occur? August 10, 2009

Components (Multimedia) for the Site:

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

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

C. Chronic excessive emissions events.
N/A

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

1	01/12/2005	(345863)
2	11/22/2005	(433498)
3	03/25/2009	(739775)
4	06/01/2009	(740045)
5	06/01/2009	(740053)
6	06/01/2009	(740059)
7	06/01/2009	(740067)
8	06/01/2009	(740074)
9	06/01/2009	(740081)
10	06/01/2009	(740151)
11	06/01/2009	(740153)
12	06/01/2009	(740154)
13	06/01/2009	(740155)
14	06/01/2009	(740156)
15	06/01/2009	(740158)
16	06/01/2009	(740159)
17	06/01/2009	(740162)
18	06/01/2009	(740165)
19	06/01/2009	(740168)
20	06/01/2009	(740170)
21	06/01/2009	(740172)
22	06/01/2009	(740175)
23	06/04/2009	(748190)
24	06/09/2009	(747793)

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

Date: 11/23/2005 (433498) CN603460817
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)
Description: Failure to maintain the public water system's operating records organized, and copies kept on file or stored electronically. The operating records must be accessible for review during inspections.

Date: 01/26/2007 (739775) CN603460817
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(I)
5A THSC Chapter 341, SubChapter A 341.033(d)
Description: TCR Routine Monitoring Violation 12/2006 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 12/2006 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 07/31/2008 (740162) CN603460817
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(I)
5A THSC Chapter 341, SubChapter A 341.033(d)
Description: TCR Routine Monitoring Violation 06/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 06/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 09/03/2008 (740165) CN603460817
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(I)
5A THSC Chapter 341, SubChapter A 341.033(d)
Description: TCR Routine Monitoring Violation 07/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 07/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 10/10/2008 (740168) CN603460817
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(I)
5A THSC Chapter 341, SubChapter A 341.033(d)
Description: TCR Routine Monitoring Violation 08/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 08/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 10/28/2008 (748190) CN603460817
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)
Description: TCR MCL Violation 10/2008 - System exceeded a Maximum Contaminant Level Violation.

Date: 01/13/2009 (740172) CN603460817
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)
Description: TCR Increase Monitoring Violation 11/2008 - Failure to collect all 5 distribution samples following a coliform found month.

Date: 03/09/2009 (740175) CN603460817
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
5A THSC Chapter 341, SubChapter A 341.033(d)
Description: TCR Routine Monitoring Violation 12/2008 - Failure to collect any routine monitoring sample(s).

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
LISA LOWERY TRUST
RN102321486**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-1817-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 Lisa Lowery Trust ("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 presented this agreement to the Commission.

The Respondent 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 Respondent 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 Respondent.

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

I. FINDINGS OF FACT

1. The Respondent owned and operated a public water system at a restaurant and bar located at 1005 Laswell Lane in Comal County, Texas (the "Facility") that has one service connection and serves at least 25 people per day for at least 60 days per year.
2. During a record review conducted on June 5, 2009, TCEQ staff documented that the Respondent did not collect routine distribution water samples for coliform analysis during the months of December 2006 and June, July, August, and December 2008 and did not provide notice to persons served by the Facility regarding the failure to conduct routine coliform monitoring during the months of December 2006 and June, July, and August 2008.

3. During a record review conducted on June 5, 2009, TCEQ staff documented that the Respondent exceeded the maximum contaminant level ("MCL") for total coliform and did not provide notice to persons served by the Facility regarding the exceedance of the MCL for total coliform during the month of October 2008.
4. During a record review conducted on June 5, 2009, TCEQ staff documented that the Respondent did not collect at least five distribution coliform samples the month following a total coliform positive result during November 2008.
5. The Respondent received notice of the violations in a letter dated June 5, 2009.
6. The Executive Director recognizes that the Respondent:
 - a. Repaired the chlorinator as of October 31, 2008;
 - b. Achieved compliance with all coliform sampling and monitoring requirements as of June 1, 2009, and;
 - c. Sold the Facility on August 10, 2009.

II. CONCLUSIONS OF LAW

1. The Respondent 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 Respondent failed to collect routine distribution water samples for coliform analysis and failed to provide notice to persons served by the Facility regarding the failure to conduct routine coliform monitoring, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. As evidenced by Findings of Fact No. 3, the Respondent exceeded the MCL for total coliform and failed to provide notice to persons served by the Facility regarding the exceedance of the MCL for total coliform, in violation of 30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(B).
4. As evidenced by Findings of Fact No. 4, the Respondent failed to collect at least five distribution coliform samples the month following a total coliform-positive result, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(2)(F).
5. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent 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.

6. An administrative penalty in the amount of Two Thousand Three Hundred Eighty-Two Dollars (\$2,382) 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 Respondent has paid Two Hundred Four Dollars (\$204) of the administrative penalty. The remaining amount of Two Thousand One Hundred Seventy-Eight Dollars (\$2,178) of the administrative penalty shall be payable in 11 monthly payments of One Hundred Ninety-Eight Dollars (\$198) 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, failure of the Respondent to meet the payment schedule of this Agreed Order constitutes failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Two Thousand Three Hundred Eighty-Two Dollars (\$2,382) as set forth in Section II, Paragraph 6 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent'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: Lisa Lowery Trust, Docket No. 2009-1817-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

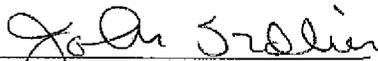
2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

4. 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.
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. 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



For the Executive Director

4/26/2010
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Lisa Lowery Trust. I am authorized to agree to the attached Agreed Order on behalf of Lisa Lowery Trust, 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, Lisa Lowery Trust 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.


Signature

March 8, 2010
Date

JANINE K. EGERTON
Name (Printed or typed)
Authorized Representative of
Lisa Lowery Trust

Trustee
Title

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

