

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2010-0214-MWD-E **TCEQ ID:** RN101525715 **CASE NO.:** 39123  
**RESPONDENT NAME:** Aqua Utilities, Inc.

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Lakeside Utility, located on Haynie Flat Road, approximately two miles north of the intersection of State Highway 71 and Haynie Flat Road, Travis County</p> <p><b>TYPE OF OPERATION:</b> Domestic wastewater treatment facility</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the BD and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on June 28, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Jeremy Escobar, Enforcement Division, Enforcement Team 3, MC R-14, (361) 825-3422; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Robert Laughman, President, Aqua Utilities, Inc., 2211 Louetta Road, Spring, Texas 77388  Mr. Abel Bautista, Wastewater Compliance Coordinator, Aqua Utilities, Inc., 2211 Louetta Road, Spring, Texas 77388  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input checked="" type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> July 28, 2009</p> <p><b>Date of NOV Relating to this Case:</b> August 3, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a follow-up investigation.</p> <p><b>WATER</b></p> <p>Failure to provide an aerator and continuous introduction of oxygen to the irrigation pond [30 TEX. ADMIN. CODE § 305.125(1) and Texas Pollutant Discharge Elimination System Permit No. WQ0013477001, Special Provisions No. 19].</p>	<p><b>Total Assessed:</b> \$970</p> <p><b>Total Deferred:</b> \$194  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$776</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent installed an aerator in the irrigation pond and began to provide continuous introduction of oxygen on September 10, 2009.</p>

Additional ID No(s): WQ0013477001



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	Assigned	20-Jan-2010	Screening	8-Feb-2010	EPA Due	
	PCW	8-Feb-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Aqua Utilities, Inc.
Reg. Ent. Ref. No.	RN101626715
Facility/Site Region	11-Austin
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	39123	No. of Violations	1
Docket No.	2010-0214-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jeremy Escobar
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## 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  \*Capped at the Total EB \$ Amount  
Approx. Cost of Compliance

**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: 8-Feb-2010

Docket No: 2010-0214-MWD-E

PCW

Respondent: Aqua Utilities, Inc.

Policy Revision 2 (September 2002)

Case ID No: 39123

PCW Revision October 30, 2008

Reg. Ent. Reference No: RN101525715

Media [Statute]: Water Quality

Enf. Coordinator: Jeremy Escobar

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were 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) 7%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The penalty is enhanced due to one NOV with similar violations and one NOV with dissimilar violations

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

Screening Date 8-Feb-2010

Docket No. 2010-0214-MWD-E

PCW

Respondent Aqua Utilities, Inc.

Policy Revision 2 (September 2002)

Case ID No. 39123

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101525715

Media [Statute] Water Quality

Enf. Coordinator Jeremy Escobar

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System Permit No. WQ0013477001, Special Provisions No. 19.

Violation Description Failed to provide an aerator and continuous introduction of oxygen to the irrigation pond.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential		X		

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

Matrix Notes Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 1 44 Number of violation days

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

Violation Base Penalty \$1,000

One quarterly event is recommended from the July 28, 2009 investigation date to the September 10, 2009 compliance date.

Good Faith Efforts to Comply

10.0% Reduction

\$100

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

Notes The Respondent came into compliance on September 10, 2009.

Violation Subtotal \$900

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$109

Violation Final Penalty Total \$970

This violation Final Assessed Penalty (adjusted for limits) \$970

## Economic Benefit Worksheet

**Respondent** Aqua Utilities, Inc.  
**Case ID No.** 39123  
**Reg. Ent. Reference No.** RN101525715  
**Media** Water Quality  
**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
<i>No commas or \$</i>							

### Delayed Costs

Equipment	\$12,931	28-Jul-2009	10-Sep-2009	0.12	\$5	\$104	\$109
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 cost paid by the Respondent for the aerator and installation. Date required is the investigation date and the final date is 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

\$12,931

TOTAL

\$109

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN602787509	Aqua Utilities, Inc.	Classification: AVERAGE	Rating: 1.68
Regulated Entity:	RN101525715	LAKESIDE UTIL	Classification: AVERAGE	Site Rating: 0.83
ID Number(s):	WASTEWATER WASTEWATER LICENSING	PERMIT LICENSE		WQ0013477001 WQ0013477001
Location:	on Haynie Flat Road, approximately two miles north of the intersection of State Highway 71 and Haynie Flat Road, Travis County, Texas			
TCEQ Region:	REGION 11 - AUSTIN			
Date Compliance History Prepared:	February 09, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	February 08, 2005 to February 08, 2010			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Jeremy Escobar	Phone:	825-3422	

## 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
- 6.

### 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	05/18/2005	(376181)
2	01/26/2009	(710002)
3	04/02/2009	(740616)
4	06/24/2009	(759565)
5	07/31/2009	(763873)

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

Date: 05/13/2005 (376181) CN602787509

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

EFFLUENT LIMITATIONS AND MONITORING REQU PERMIT

Description: Failure to maintain adequate chlorine residual

Date: 01/28/2009 (710002) CN602787509

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to collect, analyze, and report soil samples from the irrigation area

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)

Description: Failure to provide aerators and continuous introduction of oxygen to the irrigation pond.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.7(c)

Description: Failure to provide monitoring records

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 319, SubChapter A 319.7(a)

Description: Failure to maintain and provide adequate sampling records (date, time, location, person, etc.) for pH and chlorine.

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  
AQUA UTILITIES, INC.  
RN101525715**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2010-0214-MWD-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 Aqua Utilities, Inc. ("the Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. 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 domestic wastewater treatment facility located on Haynie Flat Road, approximately two miles north of the intersection of State Highway 71 and Haynie Flat Road in Travis County, Texas (the "Facility").
2. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. 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.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about August 8, 2009.
5. 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.
6. An administrative penalty in the amount of Nine Hundred Seventy Dollars (\$970) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The

Respondent has paid Seven Hundred Seventy-Six Dollars (\$776) of the administrative penalty and One Hundred Ninety-Four Dollars (\$194) 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.

7. 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.
8. 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.
9. The Executive Director recognizes that the Respondent installed an aerator in the irrigation pond and began to provide continuous introduction of oxygen on September 10, 2009.
10. 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.
11. 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.
12. 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 failed to provide an aerator and continuous introduction of oxygen to the irrigation pond, in violation of 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System Permit No. WQ0013477001, Special Provisions No. 19, as documented during an investigation conducted on July 28, 2009.

## **III. DENIALS**

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

#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 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: Aqua Utilities, Inc., Docket No. 2010-0214-MWD-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. 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.
4. 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.
5. 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.

### SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*John Szolien*  
For the Executive Director

6/10/2010  
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.

AB

*R. L. Laughman*  
Signature

4/27/2010  
Date

ROBERT LAUGHMAN  
Name (Printed or typed)  
Authorized Representative of  
Aqua Utilities, Inc.

PRESIDENT  
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.