

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2009-0472-PWS-E TCEQ ID: RN101196103 CASE NO.: 37395
RESPONDENT NAME: PAUL SIMS DBA ROSEBOWL REGENCY INN

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 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

SITE WHERE VIOLATION(S) OCCURRED: 2905 Highway 290 West, Brenham, Washington County

TYPE OF OPERATION: Public water system

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is one additional pending enforcement action regarding this facility location (2010-0212-PWS-E – set on August 25, 2010 agenda).

INTERESTED PARTIES: No one other than the ED and the respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired May 31, 2010. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney: Ms. Peipey Tang, Litigation Division, MC 175, (512) 239-0654
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400
TCEQ Enforcement Coordinator: Ms. Amanda Henry, Water Enforcement Section, MC R-12, (713) 767-3672
TCEQ Regional Contact: Mr. Frank Burtleson, Waco Regional Office, MC R-9, (254) 761-3001
Respondent: Mr. Paul Sims, 2905 Highway 290 West, Brenham, Texas 77833
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint</p> <p><input type="checkbox"/> Routine</p> <p><input type="checkbox"/> Enforcement Follow-up</p> <p><input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: January 22, 2009</p> <p>Date of NOE Relating to this Case: February 26, 2009</p> <p>Background Facts: The EDPRP was filed July 17, 2009. Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the Agreed Order was signed on April 15, 2010</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>PWS:</p> <ol style="list-style-type: none"> Failed to measure the free chlorine residual within the distribution system with a diethyl-p-phenylendiamine ("DPD") colorimeter, spectrophotometer, or color comparator test kit [30 TEX. ADMIN. CODE § 290.110(d)(1)(c)(ii)]. Failed to enclose the well with an intruder-resistant fence or a locked ventilated well house to exclude possible contamination or damage to the Facility by trespassers [30 TEX. ADMIN. CODE § 290.41(c)(3)(O)]. Failed to compile and maintain records of water works operation and maintenance activities for operator reference and Commission review [30 TEX. ADMIN. CODE § 290.46(f)(2)and 290.46(f)(3)(D)(ii)]. 	<p>Total Assessed: \$577</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order</p> <p><input type="checkbox"/> Financial Inability to Pay</p> <p><input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid/Due to General Revenue: \$137/\$440</p> <p>Respondent paid \$137 of the administrative penalty. The remaining amount of \$440 shall be paid in 4 monthly installments of \$110 each.</p> <p>Site Compliance History Classification N/A</p> <p>Person Compliance History Classification N/A</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 Respondent implemented the following corrective measures:</p> <ol style="list-style-type: none"> On March 26, 2009, obtained a DPD colorimeter; and On November 5, 2009, submitted records of water works operation and maintenance activities. <p>Ordering Provisions:</p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> Within 30 days, repair the well house so that it is rendered intruder-resistant and ensure the well house is locked when left unattended. Within 45 days, submit written certification to demonstrate compliance with Ordering Provision No. 1.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	3-Mar-2009			
	PCW	26-Jun-2009	Screening	13-Mar-2009	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Paul Sims dba Rosebowl Regency Inn
Reg. Ent. Ref. No.	RN101196103
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37395	No. of Violations	3
Docket No.	2009-0472-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Amanda Henry
		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	\$560
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$28
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Notes: Enhancement is due one prior Notice of Violation with the same violations as those in the current enforcement action.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$50
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$5
 Approx. Cost of Compliance: \$129
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$538
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$538

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$577
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$577
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Screening Date 13-Mar-2009

Docket No. 2009-0472-PWS-E

PCW

Respondent Paul Sims dba Rosebowl Regency Inn

Policy Revision 2 (September 2002)

Case ID No. 37395

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101196103

Media [Statute] Public Water Supply

Enf. Coordinator Amanda Henry

Compliance History Worksheet

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

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

Adjustment Percentage (Subtotal 2) 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

Enhancement is due one prior Notice of Violation with the same violations as those in the current enforcement action.

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

Screening Date 13-Mar-2009 **Docket No.** 2009-0472-PWS-E **PCW**
Respondent Paul Sims dba Rosebowl Regency Inn *Policy Revision 2 (September 2002)*
Case ID No. 37395 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101196103
Media [Statute] Public Water Supply
Enf. Coordinator Amanda Henry

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

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

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text" value="x"/>
N/A	<input type="text"/>	(mark with x)

Notes

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Paul Sims dba Rosebowl Regency Inn
Case ID No. 37395
Reg. Ent. Reference No. RN101196103
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)	\$49	22-Jan-2009	26-Mar-2009	0.17	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the amount to obtain a test kit that measures the free chlorine residual, calculated from the date of the record review 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

\$49

TOTAL

\$0

Screening Date 13-Mar-2009 **Docket No.** 2009-0472-PWS-E **PCW**
Respondent Paul Sims dba Rosebowl Regency Inn *Policy Revision 2 (September 2002)*
Case ID No. 37395 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101196103
Media [Statute] Public Water Supply
Enf. Coordinator Amanda Henry

Violation Number

Rule Cite(s)

Violation Description Failed to enclose the well with an intruder-resistant fence or a locked ventilated well house to exclude possible contamination or damage to the Facility by trespassers. Specifically, at the time of the record review, it was documented that the top boards of the well house were not secured to the enclosure and were easily removable which would not render the well house intruder-resistant if left unattended.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes Failing to render the well house intruder-resistant may allow persons to enter and vandalize the storage tanks which may compromise the system's ability to provide a safe and adequate water supply exposing customers to an insignificant amount of pollutants which would not exceed levels that are protective of human health.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	x

Violation Base Penalty

One single event is recommended.

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	x	(mark with x)

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

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Paul Sims dba Rosebowl Regency Inn
Case ID No. 37395
Reg. Ent. Reference No. RN101196103
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
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$30	22-Jan-2009	31-Dec-2009	0.94	\$0	\$2	\$2
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 amount to ensure the gate around the well house is locked and secured, calculated from the record review date 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

\$30

TOTAL

\$2

Screening Date 13-Mar-2009 **Docket No.** 2009-0472-PWS-E **PCW**
Respondent Paul Sims dba Rosebowl Regency Inn *Policy Revision 2 (September 2002)*
Case ID No. 37395 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN101196103
Media [Statute] Public Water Supply
Enf. Coordinator Amanda Henry

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	
	Potential	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>

>> Programmatic Matrix

	Major	Moderate	Minor	
Falsification	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	Percent <input type="text" value="1%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

Notes

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Paul Sims dba Rosebowl Regency Inn
Case ID No. 37395
Reg. Ent. Reference No. RN101196103
Media Public Water Supply
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$50	22-Jan-2009	31-Dec-2009	0.94	\$2	n/a	\$2
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 amount to begin maintaining a record keeping system. The date required is the date of the record review. The final date is the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$50

TOTAL

\$2

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603440843 Sims, Paul	Classification:	Rating:
Regulated Entity:	RN101196103 ROSEBOWL REGENCY INN	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	2390042
	WATER LICENSING	LICENSE	2390042
Location:	2905 Highway 290 West, near Brenham, Texas, Washington County		
TCEQ Region:	REGION 09 - WACO		
Date Compliance History Prepared:	March 13, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 13, 2004 to March 13, 2009		

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

Name: Amanda Henry Phone: 713-767-3672

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 of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- | | | | |
|---|------------|----------|--|
| 1 | 03/13/2006 | (439473) | |
| 2 | 02/20/2008 | (618189) | |
| 3 | 04/15/2008 | (638717) | |
| 4 | 02/26/2009 | (724648) | |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|---|----------|-----------------------|
| Date: | 03/03/2006 | (439473) | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.110(d)(1)
30 TAC Chapter 290, SubChapter F 290.110(d)(1)(A)
30 TAC Chapter 290, SubChapter F 290.110(d)(1)(B)
30 TAC Chapter 290, SubChapter F 290.110(d)(1)(C) | | |
| Description: | Failure to have a DPD colorimeter, spectrophotometer, or color comparator test kit to measure the free chlorine residual within the distribution system. | | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.38(34)
30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O) | | |
| Description: | Failure to provide an intruder-resistant fence or a locked, ventilated well house to exclude possible contamination or damage to the well by trespassers. | | |
| Self Report? | NO | | Classification: Minor |

Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(2)
Description: Failure to provide water system records that needed to be reviewed at the time of the investigation.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)(B)
Description: Failure to inspect the pressure tank internally every five years.

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
AGAINST PAUL SIMS DBA
ROSEBOWL REGENCY INN;
RN101196103**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-0472-PWS-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Paul Sims dba Rosebowl Regency Inn (“Mr. Sims”) under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Sims appear before the Commission and together stipulate that:

1. Mr. Sims owns and operates a public water system at 2905 Highway 290 West, Brenham, Washington County, Texas (the “Facility”). The Facility provides water for human consumption, has 76 service connections, and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(66).
2. This Agreed Order is entered into pursuant to TEX. HEALTH & SAFETY CODE § 341.049. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 and TEX. HEALTH & SAFETY CODE § 341.031 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 341 and TCEQ rules.
3. The Commission and Mr. Sims agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Sims is subject to the Commission’s jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Sims of any violation alleged in Section II (“Allegations”), nor of any statute or rule.
5. An administrative penalty in the amount of five hundred seventy-seven dollars (\$577.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). Mr. Sims paid one hundred thirty-seven dollars (\$137.00) of the administrative penalty. The remaining amount of four hundred forty dollars (\$440.00) of the administrative penalty shall be payable in 4 monthly payments of one hundred ten dollars (\$110.00) each. The first monthly payment shall be paid within 30 days after the

- effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Mr. Sims fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his 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, Mr. Sims' failure to meet the payment schedule of this Agreed Order constitutes the failure by Mr. Sims to timely and satisfactorily comply with all of the terms of this Agreed Order.
6. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
 7. The Executive Director of the TCEQ and Mr. Sims agree on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
 8. The Executive Director recognizes that Mr. Sims implemented the following corrective measures at the Facility in response to this enforcement action:
 - a. Obtained a diethyl-p-phenylendiamine ("DPD") colorimeter on March 26, 2009; and
 - b. Submitted records of water works operation and maintenance activities on November 5, 2009.
 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 Mr. Sims 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

1. During a record review conducted on January 22, 2009, a TCEQ Waco Regional Office investigator documented that Mr. Sims violated the following requirements:
 - a. 30 TEX. ADMIN. CODE § 290.110(d)(1)(c)(ii), by failing to measure the free chlorine residual within the distribution system with a diethyl-p-phenylendiamine ("DPD") colorimeter, spectrophotometer, or color comparator test kit.

Specifically, no approved device was available at the Facility to measure the free chlorine residual.

- b. 30 TEX. ADMIN. CODE § 290.41(c)(3)(O), by failing to enclose the well with an intruder-resistant fence or a locked ventilated well house to exclude possible contamination or damage to the Facility by trespassers. Specifically, it was documented that the top boards of the well house were not secured to the enclosure and were easily removable, which would not render the well house intruder-resistant if left unattended.
 - c. 30 TEX. ADMIN. CODE § 290.46(f)(2), by failing to maintain records of water works operation and maintenance activities for operator reference and Commission review. Specifically, it was documented that copies of the sanitary control easement, well drillers log, plant operating records, and a copy of the inspection report of the interior pressure tank were not available for review.
2. Mr. Sims received notice of the violations alleged in Section II on or about March 3, 2009.

III. DENIALS

Mr. Sims generally denies each Allegation in Section II.

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Mr. Sims pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and Mr. Sims'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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Paul Sims dba Rosebowl Regency Inn, Docket No. 2009-0472-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. Mr. Sims shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order, Mr. Sims shall repair the well house so that it is rendered intruder-resistant and ensure the well house is locked when left unattended, in accordance with 30 TEX. ADMIN. CODE § 290.41.
- b. Within 45 days after the effective date of this Agreed Order, Mr. Sims shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.

“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:

Frank Burlison, Water Section Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

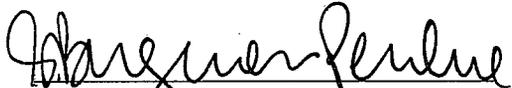
3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Sims. Mr. Sims is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any 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 Mr. Sims shall be made in writing to the Executive Director. Extensions are not effective until Mr. Sims 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 Mr. Sims 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.
7. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of this Agreed Order to Mr. Sims, or three days after the date on which the Commission mails notice of this Agreed Order to Mr. Sims, 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



For the Executive Director

7/21/2010

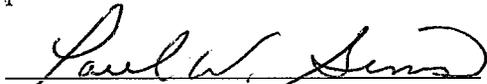
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on Mr. Sims' compliance history;
- Greater scrutiny of any permit applications submitted by Mr. Sims;
- 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 against Mr. Sims;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Mr. Sims; and
- TCEQ seeking other relief as authorized by law.

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



Signature

4/15/10

Date

PAUL W SIMS

Name (Printed or typed)
Paul Sims dba Rosebowl Regency Inn

owner

Title