Executive Summary – Enforcement Matter – Case No. 41644
AMERICAN PIONEER INVESTMENTS, INC.
RN101273993
Docket No. 2011-0763-PWS-E

Order Type:
1660 Agreed Order
Findings Order Justification:
N/A
Media:
PWS
Small Business:
Yes
Location(s) Where Violation(s) Occurred:
Star Food N Grocery, 6835 East Mount Houston Road, near Houston, Harris County
Type of Operation:
Public water supply
Other Significant Matters:
Additional Pending Enforcement Actions: Yes, Docket No. 2011-0185-PST-E
Past-Due Penalties: No
Other: N/A
Interested Third-Parties: None
Texas Register Publication Date: August 5, 2011
Comments Received: No

Penalty Information

Total Penalty Assessed: $2,124
Amount Deferred for Expedited Settlement: $424
Amount Deferred for Financial Inability to Pay: $0
Total Paid to General Revenue: $1,700
Total Due to General Revenue: $0
Payment Plan: N/A
SEP Conditional Offset: $0
Name of SEP: N/A
Compliance History Classifications:
Person/CN - Average
Site/RN - N/A
Major Source: No
Statutory Limit Adjustment: N/A
Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41644
AMERICAN PIONEER INVESTMENTS, INC.
RN101273993
Docket No. 2011-0763-PWS-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: March 17, 2011
Date(s) of NOE(s): April 26, 2011

Violation Information

1. Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result for routine distribution coliform samples collected in July 2010 and failed to provide public notice of the failure to collect repeat distribution samples in July 2010 [30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(ii) and 290.122(c)(2)(B)].

2. Failed to collect a minimum of five distribution coliform samples the month following a total coliform positive sample result during the months of August 2010 and February 2011 and failed to provide public notice of the failure to conduct increased monitoring during the months of August 2010 [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(B)].

3. Failed to comply with the Maximum Contaminant Level ("MCL") for total coliform during the months of January and February 2011 and failed to provide public notice for exceeding the MCL for total coliform for the month of January 2011 [30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 209.122(b)(2)(A) and TEX. HEALTH & SAFETY CODE § 341.031(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

a. Within 10 days, begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants. This provision will be satisfied upon six months of compliance monitoring and reporting;

b. Within 30 days, implement procedures to ensure all necessary public notifications are provided in a timely manner to the customers of the Facility; and

c. Within 195 days, submit written certification demonstrating compliance.

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Docket No. 2011-0763-PWS-E

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Andrea Linson, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-1482; Debra Barber, Enforcement Division, MC 219, (512) 239-0412
TCEQ SEP Coordinator: N/A
Respondent: Tim Witten, President, AMERICAN PIONEER INVESTMENTS, INC., 8556 Katy Freeway, Suite 128, Houston, Texas 77024
Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision October 30, 2008*

TCEQ

DATES **Assigned** 2-May-2011 **PCW** 18-May-2011 **Screening** 13-May-2011 **EPA Due** 30-Jun-2011

RESPONDENT/FACILITY INFORMATION

Respondent AMERICAN PIONEER INVESTMENTS, INC.
Reg. Ent. Ref. No. RN101273993
Facility/Site Region 12-Houston **Major/Minor Source** Minor

CASE INFORMATION

Enf./Case ID No. 41644
Docket No. 2011-0763-PWS-E
Media Program(s) Public Water Supply
Multi-Media
No. of Violations 3
Order Type 1660
Government/Non-Profit No
Enf. Coordinator Andrea Linson
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*** **$1,250**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **22.0%** Enhancement ***Subtotals 2, 3, & 7*** **$275**

Notes: Enhancement for four NOVs with same/similar violations and one NOV with dissimilar violations.

Culpability No **0.0%** Enhancement ***Subtotal 4*** **$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments ***Subtotal 5*** **$0**

Economic Benefit **0.0%** Enhancement* ***Subtotal 6*** **$0**

Total EB Amounts $603
Approx. Cost of Compliance $670

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 ***Final Subtotal*** **$1,525**

OTHER FACTORS AS JUSTICE MAY REQUIRE **39.3%** ***Adjustment*** **$599**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement recommended to recover the avoided costs of compliance.

Final Penalty Amount **$2,124**

STATUTORY LIMIT ADJUSTMENT ***Final Assessed Penalty*** **$2,124**

DEFERRAL **20.0%** Reduction ***Adjustment*** **-$424**

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **$1,700**

Screening Date 13-May-2011 **Docket No.** 2011-0763-PWS-E **PCW**

Respondent AMERICAN PIONEER INVESTMENTS, INC.

Policy Revision 2 (September 2002)

Case ID No. 41644

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101273993

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson

Compliance History Worksheet

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

Component	Number of...	*Enter Number Here*	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	4	20%
	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) 22%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for four NOVs with same/similar violations and one NOV with dissimilar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 22%

Screening Date 13-May-2011 **Docket No.** 2011-0763-PWS-E **PCW**

Respondent AMERICAN PIONEER INVESTMENTS, INC.

Policy Revision 2 (September 2002)

Case ID No. 41644

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101273993

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(3)(A)(ii) and 290.122(c)(2)(B)

Violation Description Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result for routine distribution coliform samples collected in July 2010 and failed to provide public notice of the failure to collect repeat distribution samples in July 2010.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failure to collect repeat samples could expose consumers to a significant amount of undetected contaminants which would exceed levels protective of human health.

Adjustment $750

$250

Violation Events

Number of Violation Events: 1 — 31 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $250

One monthly event is recommended.

Good Faith Efforts to Comply

0.0% Reduction — $0

	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 $105

Statutory Limit Test

Violation Final Penalty Total $425

This violation Final Assessed Penalty (adjusted for limits) $425

Economic Benefit Worksheet

Respondent AMERICAN PIONEER INVESTMENTS, INC.
Case ID No. 41644
Req. Ent. Reference No. RN101273993
Media Public Water Supply
Violation No. 1

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]	$100	20-Jul-2010	31-Jul-2010	0.00	$0	$100	$100
Other (as needed)	$5	1-Nov-2010	30-Nov-2010	0.00	$0	$5	$5
Notes for AVOIDED costs	The avoided costs include the estimated cost to collect a total of four repeat water samples ($25 per sample) and provide public notice for the failure to collect the samples ($5 per notice), calculated for the month in which no repeat samples were collected and during the period public notification was required.						

Approx. Cost of Compliance $105

TOTAL $105

Screening Date 13-May-2011 **Docket No.** 2011-0763-PWS-E **PCW**

Respondent AMERICAN PIONEER INVESTMENTS, INC.

Policy Revision 2 (September 2002)

Case ID No. 41644

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101273993

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(F) and 290.122(c)(2)(B)

Violation Description Failed to collect a minimum of five distribution coliform samples the month following a total coliform positive sample result during the months of August 2010 and February 2011 and failed to provide public notice of the failure to conduct increased monitoring during the month of August 2010.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

	Release	Harm: Major	Moderate	Minor
OR	Actual			
	Potential	x		

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failure to collect additional water samples for coliform analysis could expose the public to a significant amount of undetected contaminants that would exceed levels that are protective of human health.

Adjustment $750

$250

Violation Events

Number of Violation Events: 2 — 58 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $500

Two monthly events are recommended.

Good Faith Efforts to Comply

0.0% Reduction — $0

	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 $500

Economic Benefit (EB) for this violation

Estimated EB Amount $277

Statutory Limit Test

Violation Final Penalty Total $850

This violation Final Assessed Penalty (adjusted for limits) $850

Economic Benefit Worksheet

Respondent AMERICAN PIONEER INVESTMENTS, INC.
Case ID No. 41644
Req. Ent. Reference No. RN101273993
Media Public Water Supply
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	$100	17-Mar-2011	15-Dec-2011	0.75	$4	n/a	$4
Notes for DELAYED costs	The delayed costs include the estimated amount to develop a protocol to ensure all necessary public notifications are provided in a timely manner. 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]	$250	30-Aug-2010	28-Feb-2011	1.42	$18	$250	$268
Other (as needed)	$5	1-Dec-2010	1-Jun-2011	1.42	$0	$5	$5
Notes for AVOIDED costs	The avoided costs include the estimated cost to conduct routine distribution sampling (10 samples at $25 per sample), and to provide public notification for the failure to collect the samples ($5 per notice), calculated for the months in which no distribution samples were taken and during the period in which public notice was required.						

Approx. Cost of Compliance $355

TOTAL $277

Screening Date 13-May-2011 **Docket No.** 2011-0763-PWS-E **PCW**

Respondent AMERICAN PIONEER INVESTMENTS, INC.

Policy Revision 2 (September 2002)

Case ID No. 41644

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101273993

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(f)(3) and 209.122(b)(2)(A) and Tex. Health & Safety Code § 341.031(a)

Violation Description Failed to comply with the Maximum Contaminant Level ("MCL") for total coliform during the months of January and February 2011 and failed to provide public notice for exceeding the MCL for total coliform for the month of January 2011.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm: Major	Moderate	Minor
	Actual		x	
	Potential			

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: The presence of coliform bacteria is an indication that the water supply is contaminated with a significant amount of contaminants which do not exceed levels protective of human health.

Adjustment $750

$250

Violation Events

Number of Violation Events: 2 — 59 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $500

Two monthly events are recommended for the months of exceedance.

Good Faith Efforts to Comply

0.0% Reduction — $0

	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 $500

Economic Benefit (EB) for this violation

Estimated EB Amount $221

Statutory Limit Test

Violation Final Penalty Total $850

This violation Final Assessed Penalty (adjusted for limits) $850

Economic Benefit Worksheet

Respondent AMERICAN PIONEER INVESTMENTS, INC.
Case ID No. 41644
Req. Ent. Reference No. RN101273993
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]	$200	1-Jan-2011	28-Feb-2011	1.08	$11	$200	$211
Other (as needed)	$10	1-Jan-2011	31-Jan-2011	0.00	$0	$10	$10
Notes for AVOIDED costs	The avoided costs include the estimated amount to investigate and identify the source of contamination and implement procedures to increase chlorination and flushing of the water system, calculated from the date of the first sample collected indicating an exceedance to the date of the last sample collected indicating an exceedance. Estimated cost ($25 per notice) to provide public notice, calculated for the 30 day period that notice was required.						

Approx. Cost of Compliance $210 **TOTAL** $221

Compliance History

Customer/Respondent/Owner-Operator: CN601019128 AMERICAN PIONEER INVESTMENTS, INC. Classification: Average Rating: 4.66

Regulated Entity: RN101273993 Star Food N Grocery Classification: Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1012334

PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 39774

Location: 6835 E MOUNT HOUSTON RD, NEAR HOUSTON, HARRIS COUNTY, TX

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: May 12, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: May 12, 2006 to May 12, 2011

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

Name: Andrea Linson Phone: (512) 239-1482

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator?

   N/A
4. If Yes, who was/were the prior owner(s)/operator(s)?

   N/A
5. When did the change(s) in owner or operator occur?

   N/A
6.

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 01/30/2007(532531)

2 03/07/2011 (901988)

3 03/14/2011 (902114)

4 03/14/2011 (902132)

5 04/26/2011 (905987)

6 03/30/2011 (908109)

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

Date: 01/26/2007 (532531)CN601019128

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)
Description: Failure to make available sanitary control easements for the well at the time of inspection.

Date: 08/31/2010 (901988) CN601019128

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)
Description: TCR Repeat Monitoring Violation 07/2010 - Failure to collect any repeats following a coliform found result.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Repeat Monitoring Violation 07/2010 - Failure to post a public notice for not collecting any repeats following a coliform found result.

Date: 09/29/2010 (902114) CN601019128

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)
Description: TCR IC Monitoring Violation 08/2010 - Failure to collect any increase monitoring sample(s) following a coliform found month.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN IC Monitoring Violation 08/2010 - Failure to post public notice for not collecting any 5 increase monitoring samples following a coliform found month.

Date: 02/24/2011 (908109) CN601019128

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)
Description: TCR MCL Violation 02/2011 - System exceeded a Maximum Contaminant Level (MCL) Violation.

Date: 03/01/2011 (902132)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)
Description: TCR MCL Violation 01/2011 - System exceeded a Maximum Contaminant Level (MCL) Violation.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(b)(2)(B)
Description: TCR PN MCL Violation 01/2011 - Failure to post a public notice for exceeding a Maximum Contaminant Level (MCL) Violation.

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 AMERICAN PIONEER INVESTMENTS, INC. RN101273993	**§ § § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2011-0763-PWS-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding AMERICAN PIONEER INVESTMENTS, INC. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a public water supply at 6835 East Mount Houston Road, near Houston, Harris 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. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

3. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 1, 2011.

4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

5. An administrative penalty in the amount of Two Thousand One Hundred Twenty-Four Dollars ($2,124) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Seven Hundred Dollars ($1,700) of the administrative penalty and Four Hundred Twenty-Four Dollars

($424) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

7. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

8. The Executive Director 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.

9. 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.

10. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive sample result for routine distribution coliform samples collected in July 2010 and failed to provide public notice of the failure to collect repeat distribution samples in July 2010, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(ii) and 290.122(c)(2)(B), as documented during a record review conducted on March 17, 2011.

2. Failed to collect a minimum of five distribution coliform samples the month following a total coliform positive sample result during the months of August 2010 and February 2011 and failed to provide public notice of the failure to conduct increased monitoring during the months of August 2010, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(B), as documented during a record review conducted on March 17, 2011.

3. Failed to comply with the Maximum Contaminant Level ("MCL") for total coliform during the months of January and February 2011 and failed to provide public notice for exceeding the MCL for total coliform for the month of January 2011, in violation of 30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 209.122(b)(2)(A) and TEX. HEALTH & SAFETY CODE § 341.031(a), as documented during a record review conducted on March 17, 2011.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: AMERICAN PIONEER INVESTMENTS, INC., Docket No. 2011-0763-PWS-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:

   a. Within 10 days after the effective date of this Agreed Order, begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants, in accordance with 30 TEX. ADMIN. CODE § 290.109. This provision will be satisfied upon six months of compliance monitoring and reporting.

   b. Within 30 days after the effective date of this Agreed Order implement procedures to ensure all necessary public notifications are provided in a timely manner to the customers of the Facility, in accordance with 30 TEX. ADMIN. CODE § 290.122.

   c. Within 195 d ays after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

      "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and

belief, 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:

Public Drinking Water Section Manager
Public Drinking Water Section, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78705-3011

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

6. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other

means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

R. D. Hyde
For the Executive Director

8/30/11
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.

Tim Witten
Signature

June 21, 2011
Date

Tim Witten
Name (Printed or typed)
Authorized Representative of
AMERICAN PIONEER INVESTMENTS, 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.