

**Executive Summary – Enforcement Matter – Case No. 40129**  
**City of Scottsville**  
**RN101227619**  
**Docket No. 2010-1254-PWS-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Three or more NOVs over the prior five year period for the same violations.

**Media:**

PWS

**Small Business:**

N/A

**Location(s) Where Violation(s) Occurred:**

Farm-to-Market Road 2199 off Highway 80, east of Marshall, Harrison County

**Type of Operation:**

municipal public water supply system

**Other Significant Matters:**

Additional Pending Enforcement Actions: None

Past-Due Penalties: None

Past-Due Fees: None

Other: This case was set previously for default on the June 22, 2011, Commission Agenda.

Interested Third-Parties: None

**Texas Register Publication Date:** August 19, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$4,372

**Amount Deferred for Expedited Settlement:** N/A

**Amount Deferred for Financial Inability to Pay:** N/A

**Total Paid to General Revenue:** \$4,372

**Total Due to General Revenue:** \$0

**Compliance History Classifications:**

Person/CN – Average

Site/RN – N/A

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

***Investigation Information***

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** July 1, 2010  
**Date(s) of NOV(s):** See Compliance History – 11 NOVs  
**Date(s) of NOE(s):** July 28, 2010

***Violation Information***

1. Failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to sample [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(A) and TEX. HEALTH & SAFETY CODE § 341.033(d)].
2. Failed to comply with the Maximum Contaminant Level (“MCL”) for total coliform and failed to provide public notification of the MCL exceedance [30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(A) and TEX. HEALTH & SAFETY CODE § 341.031(a)].
3. Failed to collect, within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample, three repeat distribution coliform samples for each routine distribution coliform-positive sample, and failed to provide public notification of the failure to collect repeat distribution samples [30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(i) and 290.122(c)(2)(A)].
4. Failed to collect at least five routine distribution coliform samples the month following a coliform-positive sample result, and failed to provide public notification of the failure to sample [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(A)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**  
N/A

**Technical Requirements:**

1. Within 10 days:
  - a. Implement procedures to ensure all necessary public notifications are provided in a timely manner to the customers of the Facility; and
  - b. Begin complying with applicable coliform monitoring requirements by collecting routine distribution samples and providing water that meets the provisions regarding microbial contaminants. This provision will be satisfied upon six consecutive months of compliant monitoring and reporting.
2. Within 195 days, submit written certification demonstrating compliance.

***Litigation Information***

**Date Petition(s) Filed:** February 28, 2011  
**Date Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A  
**Settlement Date:** June 15, 2011

**Executive Summary – Enforcement Matter – Case No. 40129**  
**City of Scottsville**  
**RN101227619**  
**Docket No. 2010-1254-PWS-E**

Page 3 of 3

***Contact Information***

**TCEQ Attorneys:** Stephanie J. Frazee, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400

**TCEQ Enforcement Coordinator:** Andrea Linson-Mgbeoduru, Water Enforcement Section,  
(512) 239-1482

**Respondent:** The Honorable Walter Johnson, Mayor, City of Scottsville, P.O. Box 453, Scottsville,  
Texas 75688

**Respondent's Attorney:** N/A

**THIS PAGE INTENTIONALLY LEFT BLANK**



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

<b>DATES</b>	<b>Assigned</b>	2-Aug-2010	<b>Screening</b>	2-Aug-2010	<b>EPA Due</b>	28-Feb-2009
	<b>PCW</b>	21-Dec-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	City of Scottsville
<b>Reg. Ent. Ref. No.</b>	RN101227619
<b>Facility/Site Region</b>	5-Tyler
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	40129	<b>No. of Violations</b>	4
<b>Docket No.</b>	2010-1254-PWS-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Andrea Linson-Mgbeoduru
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$2,750
---	-------------------	---------

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	59.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$1,622
---------------------------	-------------------	--------------------------------	---------

Notes: Enhancement for 11 Notices of Violation ("NOV") that contain the same/similar violations as those in the current enforcement action and two dissimilar NOV's.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
--------------------	----	------------------	-------------------	-----

Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
--	-------------------	-----

<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts: \$1,066  
 Approx. Cost of Compliance: \$1,075  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$4,372
-----------------------------	-----------------------	---------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** \$4,372

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$4,372
-----------------------------------	-------------------------------	---------

<b>DEFERRAL</b>	0.0%	Reduction	<b>Adjustment</b>	\$0
-----------------	------	-----------	-------------------	-----

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

Notes:

No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	\$4,372
------------------------	---------

**Screening Date** 2-Aug-2010

**Docket No.** 2010-1254-PWS-E

**PCW**

**Respondent** City of Scottsville

*Policy Revision 2 (September 2002)*

**Case ID No.** 40129

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101227619

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Andrea Linson-Mgbeoduru

### 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 ( <i>number of NOVs meeting criteria</i> )	11	55%
	Other written NOVs	2	4%
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)** 59%

**>> 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 11 Notices of Violation ("NOV") that contain the same/similar violations as those in the current enforcement action and two dissimilar NOVs.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 59%

**Screening Date** 2-Aug-2010 **Docket No.** 2010-1254-PWS-E **PCW**  
**Respondent** City of Scottsville *Policy Revision 2 (September 2002)*  
**Case ID No.** 40129 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101227619  
**Media [Statute]** Public Water Supply  
**Enf. Coordinator** Andrea Linson-Mgbeoduru

**Violation Number**

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

**Violation Description** Failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to sample for the following months: February, April, May, July, August, September and October 2008; and February 2010.

**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** Failure to properly sample may expose the public to a significant amount of undetected contaminants which would exceed levels protective of human health.

**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**

Eight monthly events are recommended, based on the months sampling was not conducted.

**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 type="text" value="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** City of Scottsville  
**Case ID No.** 40129  
**Req. Ent. Reference No.** RN101227619  
**Media Violation No.** 1  
**Public Water Supply**

Percent Interest	Years of Depreciation
5.0	15

Item Description	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)	\$100	1-Jul-2010	31-Aug-2011	1.17	\$0	\$8	\$8
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: The delayed cost includes the estimated amount to implement training on procedures necessary to ensure that all public notifications are provided in a timely manner to the customers of the Facility, calculated from the date of the file review to the estimated date of compliance.

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$225	29-Feb-2008	28-Feb-2010	2.92	\$33	\$225	\$258
Other (as needed)	\$200	31-May-2008	31-May-2010	2.92	\$29	\$200	\$229

Notes for AVOIDED costs: The avoided costs include the estimated amount necessary (\$25 x 9 samples + \$25 x 8 public notices) to conduct routine coliform sampling and provide public notification of the failure to collect the sample, calculated for the months in which no samples were collected and during the period that a public notice was required.

Approx. Cost of Compliance \$525

**TOTAL** \$495

Screening Date 2-Aug-2010

Docket No. 2010-1254-PWS-E

PCW

Respondent City of Scottsville

Policy Revision 2 (September 2002)

Case ID No. 40129

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101227619

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson-Mgbeoduru

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(f)(3) and 290.122(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 and failed to provide public notification of the MCL exceedence for the month of March 2010.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes As a result of the exceedence, persons served by the Facility have been exposed to significant amounts of contaminants which do not exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1 31 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$250

One monthly event is recommended, based on the month of the MCL exceedence.

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

Statutory Limit Test

Estimated EB Amount \$235

Violation Final Penalty Total \$398

This violation Final Assessed Penalty (adjusted for limits) \$398

# Economic Benefit Worksheet

**Respondent** City of Scottsville  
**Case ID No.** 40129  
**Req. Ent. Reference No.** RN101227619  
**Media Violation No.** Public Water Supply  
 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)				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-Mar-2010	31-Mar-2010	1.00	\$10	\$200	\$210
Other (as needed)	\$25	1-Apr-2010	30-Apr-2010	0.00	\$0	\$25	\$25

Notes for AVOIDED costs

The one-time avoided cost includes the estimated amount to provide additional oversight necessary to prevent or avoid the exceedence, calculated for the month the exceedence occurred and the other avoided cost includes the amount necessary to provide public notification, calculated for the time frame the notice should have been provided.

Approx. Cost of Compliance \$225

**TOTAL** \$235

Screening Date 2-Aug-2010

Docket No. 2010-1254-PWS-E

PCW

Respondent City of Scottsville

Policy Revision 2 (September 2002)

Case ID No. 40129

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101227619

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson-Mgbeoduru

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code §§ 290.109(c)(3)(A)(i) and 290.122(c)(2)(A)

Violation Description

Failed to collect, within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample, three repeat distribution coliform samples for each routine distribution coliform-positive sample; and failed to provide public notification of the failure to collect repeat distribution samples during the month of March 2010. Specifically, at the time of the record review, it was documented that each of the Facility's two routine distribution samples for coliform analysis exceeded the MCL for total coliform bacteria. However, the Facility did not collect the required six repeat distribution coliform samples.

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 properly sample may expose the public to a significant amount of undetected contaminants that exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1 31 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$250

One monthly event is recommended, based on the month the repeat samples were not collected.

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

Statutory Limit Test

Estimated EB Amount \$184

Violation Final Penalty Total \$398

This violation Final Assessed Penalty (adjusted for limits) \$398

# Economic Benefit Worksheet

**Respondent** City of Scottsville  
**Case ID No.** 40129  
**Req. Ent. Reference No.** RN101227619  
**Media Violation No.** Public Water Supply  
 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				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]	\$150	1-Mar-2010	31-Mar-2010	1.00	\$8	\$150	\$158
Other (as needed)	\$25	1-Apr-2010	30-Jun-2010	1.16	\$1	\$25	\$26

Notes for AVOIDED costs

The avoided costs include the estimated amount necessary (\$25 x 6 samples + \$25 x 1 public notice) to collect six repeat distribution coliform samples and provide public notification of the failure to collect the repeat distribution samples. The date calculated for public notice is the time period that the notice should have been issued.

Approx. Cost of Compliance \$175

**TOTAL** \$184

Screening Date 2-Aug-2010

Docket No. 2010-1254-PWS-E

PCW

Respondent City of Scottsville

Policy Revision 2 (September 2002)

Case ID No. 40129

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101227619

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson-Mgbeoduru

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code §§ 290.109(c)(2)(F) and 290.122(c)(2)(A)

Violation Description

Failed to collect at least five routine distribution coliform samples the month following a coliform-positive sample result occurred and failed to provide public notification of the failure to sample for the month of April 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 properly sample may expose the public to a significant amount of undetected contaminants that exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1

30 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$250

One monthly event is recommended, based on the month sampling was not conducted.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$151

Violation Final Penalty Total \$398

This violation Final Assessed Penalty (adjusted for limits) \$398

## Economic Benefit Worksheet

**Respondent** City of Scottsville  
**Case ID No.** 40129  
**Req. Ent. Reference No.** RN101227619  
**Media Violation No.** Public Water Supply  
 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$125	1-Apr-2010	30-Apr-2010	0.00	\$0	\$125	\$125
Other (as needed)	\$25	1-May-2010	31-Jul-2010	1.17	\$1	\$25	\$26

Notes for AVOIDED costs

The avoided costs include the estimated amount necessary (\$25 x 5 samples + \$25 x 1 public notice) to conduct routine coliform sampling and provide public notification of the failure to sample. The time period to collect the distribution sample is the month the samples were due. The date calculated for public notification is the time period that the notification should have been issued.

Approx. Cost of Compliance \$150

**TOTAL** \$151

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600667943 City of Scottsville Classification: AVERAGE Rating: 6.00  
Regulated Entity: RN101227619 SCOTTSVILLE WATER SYSTEM Classification: Site Rating:  
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1020006  
WATER LICENSING LICENSE 1020006

Location: LOCATED ON FARM-TO-MARKET ROAD 2199, OFF HIGHWAY 80, EAST OF MARSHALL,  
HARRISON COUNTY, TEXAS

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: August 02, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 02, 2005 to August 02, 2010

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

Name: Andrea Linson-Mgbeoduru 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

### 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. (CEEDS Inv. Track. No.)

- 1 08/16/2007 (566033)
- 2 06/28/2010 (801869)
- 3 07/13/2010 (841117)
- 4 07/23/2010 (841271)
- 5 07/23/2010 (841597)
- 6 07/23/2010 (841599)
- 7 07/23/2010 (841623)
- 8 07/23/2010 (841625)
- 9 07/23/2010 (841629)
- 10 07/23/2010 (841631)
- 11 07/23/2010 (841639)
- 12 07/23/2010 (841642)
- 13 07/23/2010 (841645)
- 14 07/30/2010 (843073)

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

- 1 Date: 08/23/2007 (566033) CN600667943  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.45(f)(1)  
Description: Failure to secure a written contract, a signed document of specific terms, or a memorandum or letter of understanding with the City of Marshall.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(1)  
Description: Failure to calibrate the well meters at least every three years.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)  
Description: Failure to provide sanitary control easements for Well 1.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 288, SubChapter B 288.20  
Description: Failure to adopt a drought contingency plan.
- 2 Date: 04/16/2008 (841623) CN600667943  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)  
Description: TCR Routine Monitoring Violation 02/2008 - Failure to collect any routine monitoring sample(s).  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)  
Description: TCR PN Routine Monitoring Violation 02/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).
- 3 Date: 05/22/2008 (841625) CN600667943  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)  
Description: TCR Routine Monitoring Violation 04/2008 - Failure to collect all routine monitoring sample(s).

- Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)  
Description: TCR PN Routine Monitoring Violation 04/2008 - Failure to post public notice for not collecting all routine monitoring sample(s).
- 4 Date: 06/27/2008 (841629) CN600667943  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)  
Description: TCR Routine Monitoring Violation 05/2008 - Failure to collect all routine monitoring sample(s).  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)  
Description: TCR PN Routine Monitoring Violation 05/2008 - Failure to post public notice for not collecting all routine monitoring sample(s).
- 5 Date: 09/03/2008 (841631) CN600667943  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)  
Description: TCR Routine Monitoring Violation 07/2008 - Failure to collect all routine monitoring sample(s).  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)  
Description: TCR PN Routine Monitoring Violation 07/2008 - Failure to post public notice for not collecting all routine monitoring sample(s).
- 6 Date: 10/10/2008 (841639) CN600667943  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)  
Description: TCR Routine Monitoring Violation 08/2008 - Failure to collect all routine monitoring sample(s).  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)  
Description: TCR PN Routine Monitoring Violation 08/2008 - Failure to post public notice for not collecting all routine monitoring sample(s).
- 7 Date: 11/19/2008 (841642) CN600667943  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)  
Description: TCR Routine Monitoring Violation 09/2008 - Failure to collect all routine monitoring sample(s).  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)  
Description: TCR PN Routine Monitoring Violation 09/2008 - Failure to post public notice for not collecting all routine monitoring sample(s).
- 8 Date: 12/09/2008 (841645) CN600667943  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)  
Description: TCR Routine Monitoring Violation 10/2008 - Failure to collect all routine monitoring sample(s).  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)  
Description: TCR PN Routine Monitoring Violation 10/2008 - Failure to post public notice for not collecting all routine monitoring sample(s).
- 9 Date: 03/29/2010 (841117) CN600667943  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)  
Description: TCR Routine Monitoring Violation 02/2010 - Failure to collect any routine monitoring sample(s).  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)  
Description: TCR PN Routine Monitoring Violation 02/2010 - Failure to post public notice for not collecting any routine monitoring sample(s).
- 10 Date: 03/30/2010 (841597) CN600667943  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)  
Description: TCR MCL Violation 03/2010 - System exceeded a Maximum Contaminant Level (MCL) Violation.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(b)(2)(A)  
Description: TCR PN MCL Violation 03/2010 - Failure to post a public notice for exceeding a Maximum Contaminant Level (MCL) Violation.

11 Date: 05/03/2010 (841271) CN600667943  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(i)  
Description: TCR Repeat Monitoring Violation 03/2010 - Failure to collect all repeats following a coliform found result.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)  
Description: TCR PN Repeat Monitoring Violation 03/2010 - Failure to post a public notice for not collecting any repeats following a coliform found result.

12 Date: 06/10/2010 (841599) CN600667943  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)  
Description: TCR IC Routine Monitoring Violation 04/2010 - Failure to collect all 5 increase distribution samples following a coliform found month.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)  
Description: TCR PN Increase Monitoring Violation 04/2010 - Failure to post public notice for not collecting all 5 increase distribution samples following a coliform found month.

13 Date: 06/30/2010 (801869) CN600667943  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.45(f)(1)  
Description: Failure to secure a written contract, a signed document of specific terms, or a memorandum or letter of understanding with the City of Marshall.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(1)  
Description: Failure to calibrate the well meters at least every three years.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)  
Description: Failure to provide sanitary control easements for Well 1.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 288, SubChapter B 288.20  
Description: Failure to adopt a drought contingency plan.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)  
Description: Failure to maintain the public water system's operating records organized, and copies kept on file or stored electronically.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)  
Description: Failure to inspect the ground storage tanks and pressure tanks annually.

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

**THIS PAGE INTENTIONALLY LEFT BLANK**

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF SCOTTSVILLE;  
RN101227619**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2010-1254-PWS-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding City of Scottsville ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent presented this Agreed Order to the Commission.

Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Respondent.

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

### **FINDINGS OF FACT**

1. Respondent owns and operates a public water system located on Farm-to-Market Road 2199 off Highway 80, east of Marshall in Harrison County, Texas (the "Facility"). The Facility provides water for human consumption, has 349 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. During a record review conducted on July 1, 2010, a TCEQ Public Water System Program investigator documented that Respondent:
  - a. Failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to sample for the following months: February, April, May, July, August, September, and October 2008 and February 2010;

- b. Failed to comply with the Maximum Contaminant Level (“MCL”) for total coliform and failed to provide public notification of the MCL exceedance for the month of March 2010;
  - c. Failed to collect, within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample, three repeat distribution coliform samples for each routine distribution coliform-positive sample and failed to provide public notification of the failure to collect repeat distribution samples during the month of March 2010. Specifically, each of the Facility’s two routine distribution samples for coliform analysis exceeded the MCL for total coliform bacteria. However, the Facility did not collect the required six repeat distribution coliform samples; and
  - d. Failed to collect at least five routine distribution coliform samples the month following a coliform-positive sample result occurred and failed to provide public notification of the failure to sample for the month of April 2010.
3. Respondent received notice of the violations on or about August 2, 2010.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to sample for the following months: February, April, May, July, August, September, and October 2008 and February 2010, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(A) and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to comply with the MCL for total coliform and failed to provide public notification of the MCL exceedance for the month of March 2010, in violation of 30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(A) and TEX. HEALTH & SAFETY CODE § 341.031(a).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to collect, within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample, three repeat distribution coliform samples for each routine distribution coliform-positive sample and failed to provide public notification of the failure to collect repeat distribution samples during the month of March 2010, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(i) and 290.122(c)(2)(A).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to collect at least five routine distribution coliform samples the month following a coliform-positive sample result occurred and failed to provide public notification of the failure to sample for the month of April 2010, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(A).

6. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of four thousand three hundred seventy-two dollars (\$4,372.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049. Respondent paid four thousand three hundred seventy-two dollars (\$4,372.00) of the administrative penalty.

### **ORDERING PROVISIONS**

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

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 7, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the matters set forth by this Agreed Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here.
2. Respondent shall undertake the following technical requirements:
  - a. Within 10 days after the effective date of this Agreed Order, Respondent shall:
    - i. 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; and
    - ii. Begin complying with applicable coliform monitoring requirements by collecting routine 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 consecutive months of compliant monitoring and reporting.
  - b. Within 195 days after the effective date of this Agreed Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team  
Texas Commission on Environmental Quality  
Enforcement Division, MC 149A  
P.O. Box 13087  
Austin, Texas 78711-3087

and:

Water Section Manager  
Texas Commission on Environmental Quality  
Tyler Regional Office  
2916 Teague Drive  
Tyler, Texas 75701-3734

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. 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.

9. Pursuant to 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 Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to 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

Johnnie Perdue  
For the Executive Director

9/14/2011  
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 City of Scottsville, 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.

Walter Johnson  
Signature - Walter Johnson, Mayor  
City of Scottsville

6/15/11  
Date