

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Three or more enforcement actions (NOVs) over the prior five year period for the same violation.

**Media:**

PWS

**Small Business:**

Yes

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

446 to 566 County Road 2050, Center, Shelby County

**Type of Operation:**

public water system

**Other Significant Matters:**

|   |      |
|---|------|
| Additional Pending Enforcement Actions: | None |
| Past-Due Penalties:                     | None |
| Past-Due Fees:                          | None |
| Other:                                  | None |
| Interested Third-Parties:               | None |

**Texas Register Publication Date:** August 5, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$2,628

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

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

**Total Paid to General Revenue:** \$2,628

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

**SEP Conditional Offset:** \$ N/A

**Compliance History Classifications:**

Person/CN – Average (Darin Borders); N/A (Matt Boren)  
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:** November 1, 2010  
**Date(s) of NOV(s):** See Compliance History – 7 NOVs  
**Date(s) of NOE(s):** November 19, 2010

***Violation Information***

Failed to collect routine distribution water samples for coliform analysis for the months of March through September 2010 and failed to provide public notifications to persons served by the Facility regarding the failure to collect samples for the months of March through May 2010 [TEX. HEALTH & SAFETY CODE § 341.033(d) and 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(ii) and 290.122(c)(2)(A)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

Respondents no longer own or operate the Facility as of June 2010.

**Technical Requirements:**

N/A

***Litigation Information***

**Date Petition(s) Filed:** April 15, 2011  
**Date Answer(s) Filed:** May 4, 2011  
**SOAH Referral Date:** June 16, 2011  
**Hearing Date(s):**  
Preliminary Hearing: August 4, 2011  
Evidentiary Hearing: N/A  
**Settlement Date:** July 6, 2011

***Contact Information***

**TCEQ Attorneys:** Peipey Tang, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400

**TCEQ SEP Coordinator:** N/A

**TCEQ Enforcement Coordinator:** Trina Grieco, Air Enforcement Section, (210) 403-4006

**TCEQ Regional Contact:** Ronald Hebert, Beaumont Regional Office, (409) 898-3838

**Respondent:** Darin Borders, P.O. Box 716, Center, Texas 75935; Matt Boren, 706 Southview Cir., Center, Texas 75935

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



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

|              |                 |             |                  |             |                            |
|--------------|-----------------|-------------|------------------|-------------|----------------------------|
| <b>DATES</b> | <b>Assigned</b> | 22-Nov-2010 |                  |             |                            |
|              | <b>PCW</b>      | 9-Mar-2011  | <b>Screening</b> | 30-Nov-2010 | <b>EPA Due</b> 16-Aug-2011 |

## RESPONDENT/FACILITY INFORMATION

|                             |  |                           |       |  |  |
|-----------------------------|--|---------------------------|-------|--|--|
| <b>Respondent</b>           | Darin Borders d/b/a Loma Linda Subdivision and Matt Boren d/b/a Loma Linda Subdivision |                           |       |  |  |
| <b>Reg. Ent. Ref. No.</b>   | RN105878870  |                           |       |  |  |
| <b>Facility/Site Region</b> | 10-Beaumont  | <b>Major/Minor Source</b> | Minor |  |  |

## CASE INFORMATION

|  |                     |                              |                    |
|--|---------------------|------------------------------|--------------------|
| <b>Enf./Case ID No.</b>                | 40775               | <b>No. of Violations</b>     | 1                  |
| <b>Docket No.</b>                      | 2010-1954-PWS-E     | <b>Order Type</b>            | Findings           |
| <b>Media Program(s)</b>                | Public Water Supply | <b>Government/Non-Profit</b> | No                 |
| <b>Multi-Media</b>                     |                     | <b>Enf. Coordinator</b>      | Trina Grieco       |
|  |                     | <b>EC's Team</b>             | Enforcement Team 5 |
| <b>Admin. Penalty \$ Limit Minimum</b> | \$50                | <b>Maximum</b>               | \$1,000            |

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

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

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

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

Notes

**Culpability**   Enhancement **Subtotal 4**

Notes

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

**Economic Benefit**  Enhancement\* **Subtotal 6**

|                            |                                    |                                   |
|----------------------------|------------------------------------|-----------------------------------|
| Total EB Amounts           | <input type="text" value="\$272"/> | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | <input type="text" value="\$350"/> |                                   |

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

Notes

**PAYABLE PENALTY**

Screening Date 30-Nov-2010

Docket No. 2010-1954-PWS-E

PCW

Respondent Darin Borders d/b/a Loma Linda Subdivision and Matt Boren

Policy Revision 2 (September 2002)

Case ID No. 40775

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105878870

Media [Statute] Public Water Supply

Enf. Coordinator Trina Grieco

### 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> )  | 7                 | 35%     |
|                               | 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) 35%

#### >> 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 seven NOVs with same/similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 35%

**Screening Date** 30-Nov-2010 **Docket No.** 2010-1954-PWS-E **PCW**  
**Respondent** Darin Borders d/b/a Loma Linda Subdivision and Matt Boren d *Policy Revision 2 (September 2002)*  
**Case ID No.** 40775 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105878870  
**Media [Statute]** Public Water Supply  
**Enf. Coordinator** Trina Grieco

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code §§ 290.109(c)(2)(A)(ii) 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 for the months of March through September of 2010 and failed to provide public notification to persons served by the Facility regarding the failure to collect samples for the months of March through May 2010.

**Base Penalty** \$1,000

>> **Environmental, Property and Human Health Matrix**

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

>> **Programmatic Matrix**

|  | Falsification | Major | Moderate | Minor | Percent |
|--|---------------|-------|----------|-------|---------|
|  |               |       |          |       | 0%      |

**Matrix Notes** Failure to collect routine distribution water samples could expose the public to a significant amount of undetected contaminants that would exceed levels protective of human health.

**Adjustment** \$750

\$250

**Violation Events**

Number of Violation Events 7 183 Number of violation days

|                                |              |   |
|--------------------------------|--------------|---|
| <i>mark only one with an x</i> | daily        |   |
|                                | weekly       |   |
|                                | monthly      | x |
|                                | quarterly    |   |
|                                | semiannual   |   |
|                                | annual       |   |
|                                | single event |   |

**Violation Base Penalty** \$1,750

Seven monthly events are recommended for the seven months sampling was not conducted.

**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 Respondents do not meet the good faith criteria for this violation.

**Violation Subtotal** \$1,750

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$272

**Violation Final Penalty Total** \$2,629

**This violation Final Assessed Penalty (adjusted for limits)** \$2,629

## Economic Benefit Worksheet

**Respondent** Darin Borders d/b/a Loma Linda Subdivision and Matt Boren d/b/a Loma Linda Subdivision  
**Case ID No.** 40775  
**Req. Ent. Reference No.** RN105878870  
**Media Violation No.** Public Water Supply  
 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)        | \$100 | 30-Jun-2010 | 15-Jul-2011 | 1.04 | \$5 | n/a | \$5 |

**Notes for DELAYED costs**  
 Estimated cost to implement procedures to ensure that all public notifications are provided in a timely manner to all customers. The date required is the date the first notification was due and the final date is the date corrective actions are projected to be completed.

### 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]    | \$175 | 31-Mar-2010 | 30-Sep-2010 | 1.42 | \$12 | \$175 | \$187 |
| Other (as needed)             | \$75  | 30-Jun-2010 | 31-Aug-2010 | 1.09 | \$4  | \$75  | \$79  |

**Notes for AVOIDED costs**  
 Avoided costs for failing to conduct routine coliform sampling for seven months (\$25 x 7 samples) and to provide public notification for three months (\$25 x 3 public notices). The dates required are the date the first sample was due to be collected (March 31, 2010) and the date the first public notice was due to be provided (June 30, 2010). The final dates are the date the last date sampling was required to be conducted (September 30, 2010) and the date the last public notice was required to be provided (August 31, 2010).

Approx. Cost of Compliance \$350

**TOTAL** \$272

## Compliance History

Customer/Respondent/Owner-Operator: CN602644619 Darin Borders Classification: AVERAGE Rating: 3.50  
 Regulated Entity: RN105878870 LOMA LINDA SUBDIVISION Classification: N/A Site Rating: N/A

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2100038  
 Location: 446 to 566 CR 2050, SHELBY COUNTY, TX

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: November 23, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: November 23, 2005 to November 23, 2010

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Trina Grieco Phone: (210) 403-4006

### 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. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 09/08/2010 | (860171) |
| 2 | 09/13/2010 | (860253) |
| 3 | 09/13/2010 | (860271) |
| 4 | 09/13/2010 | (863405) |
| 5 | 09/13/2010 | (863410) |
| 6 | 11/18/2010 | (872668) |
| 7 | 11/18/2010 | (878149) |
| 8 | 11/19/2010 | (878216) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |   |              |  |          |                          |
|---|--------------|--|----------|--------------------------|
| 1 | Date:        | 05/03/2010   | (860171) |                          |
|   | Self Report? | NO   |          | Classification: Moderate |
|   | Citation:    | 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  |          |                          |
|   | Description: | TCR Routine Monitoring Violation 03/2010 - Failure to collect any routine monitoring sample(s).                                  |          |                          |
|   | Self Report? | NO   |          | Classification: Moderate |
|   | Citation:    | 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  |          |                          |
|   | Description: | TCR PN Routine Monitoring Violation 03/2010 - Failure to post public notice for not collecting any routine monitoring sample(s). |          |                          |
|   |              |  |          |                          |
| 2 | Date:        | 06/10/2010   | (860271) |                          |
|   | Self Report? | NO   |          | Classification: Moderate |
|   | Citation:    | 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  |          |                          |
|   | Description: | TCR Routine Monitoring Violation 04/2010 Failure to collect any routine monitoring sample(s).                                    |          |                          |

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: TCR PN Routine Monitoring Violation 04/2010 Failure to post public notice for not collecting any routine monitoring sample(s).

- 3 Date: 07/06/2010 (860253)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 05/2010 Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: TCR PN Routine Monitoring Violation 05/2010 Failure to post public notice for not collecting any routine monitoring sample(s).

- 4 Date: 07/23/2010 (863405)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 06/2010 Failure to collect any routine monitoring sample(s).

- 5 Date: 08/31/2010 (863410)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 07/2010 Failure to collect any routine monitoring sample(s).

- 6 Date: 09/29/2010 (872668)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 08/2010 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: TCR PN Routine Monitoring Violation 08/2010 - Failure to post public notice for not collecting any routine monitoring sample(s).

- 7 Date: 10/26/2010 (878149)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 09/2010 - Failure to collect any routine monitoring sample(s).

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# Compliance History

Customer/Respondent/Owner-Operator: CN603629064 Matt Boren Classification: N/A Rating: N/A  
 Regulated Entity: RN105878870 LOMA LINDA SUBDIVISION Classification: N/A Site Rating: N/A

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2100038  
 Location: 446 to 566 CR 2050, SHELBY COUNTY, TX

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: November 23, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: November 23, 2005 to November 23, 2010

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Trina Grieco Phone: (210) 403-4006

## 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. (CCEDS Inv. Track. No.)
 

|   |            |          |
|---|------------|----------|
| 1 | 09/08/2010 | (860171) |
| 2 | 09/13/2010 | (860253) |
| 3 | 09/13/2010 | (860271) |
| 4 | 09/13/2010 | (863405) |
| 5 | 09/13/2010 | (863410) |
| 6 | 11/18/2010 | (872668) |
| 7 | 11/18/2010 | (878149) |
| 8 | 11/19/2010 | (878216) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
  - 1
 

|              |  |          |                          |
|--------------|--|----------|--------------------------|
| Date:        | 05/03/2010   | (860171) |                          |
| Self Report? | NO   |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  |          |                          |
| Description: | TCR Routine Monitoring Violation 03/2010 - Failure to collect any routine monitoring sample(s).                                  |          |                          |
| Self Report? | NO   |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  |          |                          |
| Description: | TCR PN Routine Monitoring Violation 03/2010 - Failure to post public notice for not collecting any routine monitoring sample(s). |          |                          |
  - 2
 

|              |   |          |                          |
|--------------|---|----------|--------------------------|
| Date:        | 06/10/2010  | (860271) |                          |
| Self Report? | NO  |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)   |          |                          |
| Description: | TCR Routine Monitoring Violation 04/2010 Failure to collect any routine monitoring sample(s). |          |                          |

Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: TCR PN Routine Monitoring Violation 04/2010 Failure to post public notice for not collecting any routine monitoring sample(s).

- 3 Date: 07/06/2010 (860253)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 05/2010 Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: TCR PN Routine Monitoring Violation 05/2010 Failure to post public notice for not collecting any routine monitoring sample(s).

- 4 Date: 07/23/2010 (863405)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 06/2010 Failure to collect any routine monitoring sample(s).

- 5 Date: 08/31/2010 (863410)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 07/2010 Failure to collect any routine monitoring sample(s).

- 6 Date: 09/29/2010 (872668)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 08/2010 - Failure to collect any routine monitoring sample(s).  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
 Description: TCR PN Routine Monitoring Violation 08/2010 - Failure to post public notice for not collecting any routine monitoring sample(s).

- 7 Date: 10/26/2010 (878149)  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
 Description: TCR Routine Monitoring Violation 09/2010 - Failure to collect any routine monitoring sample(s).

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
DARIN BORDERS D/B/A  
LOMA LINDA SUBDIVISION AND  
MATT BOREN D/B/A  
LOMA LINDA SUBDIVISION;  
RN105878870**

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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2010-1954-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 Darin Borders d/b/a Loma Linda Subdivision and Matt Boren d/b/a Loma Linda Subdivision (jointly referred to as "Respondents") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondents presented this Agreed Order to the Commission.

Respondents understand that they have 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, Respondents agree 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 Respondents.

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

### **FINDINGS OF FACT**

1. Respondents owned and operated a public water system located at 446 to 566 County Road 2050 in Center, Shelby County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 14 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 November 1, 2010, a TCEQ Central Office investigator documented that Respondents failed to collect routine distribution water samples for coliform analysis for the months of March through September 2010 and

failed to provide public notifications to persons served by the Facility regarding the failure to collect samples for the months of March through May 2010.

3. Respondents received notice of the violation on or about November 24, 2010.
4. The Executive Director recognizes that Respondents no longer own or operate the Facility as of June 2010.

### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondents are 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, Respondents failed to collect routine distribution water samples for coliform analysis for the months of March through September 2010 and failed to provide public notifications to persons served by the Facility regarding the failure to collect samples for the months of March through May 2010, in violation of TEX. HEALTH & SAFETY CODE § 341.033(d) and 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(ii) and 290.122(c)(2)(A).
3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Respondents 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.
4. An administrative penalty in the amount of two thousand six hundred twenty-eight dollars (\$2,628.00) 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. Respondents paid two thousand six hundred twenty-eight dollars (\$2,628.00) of the administrative penalty.

### **ORDERING PROVISIONS**

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

1. Respondents are assessed an administrative penalty as set forth in Conclusion of Law No. 4, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' 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. All relief not expressly granted in this Agreed Order is denied.
3. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondents.
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

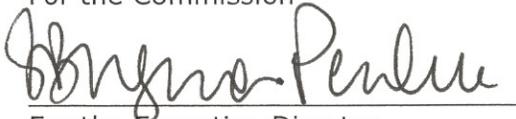
by Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

5. 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 Respondents have not complied with one or more of the terms or conditions in this Agreed Order.
6. 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.
7. 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.
8. 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 Respondents, or three days after the date on which the Commission mails notice of this Agreed Order to Respondents, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

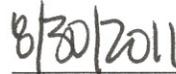
**SIGNATURE PAGE**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

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



For the Executive Director



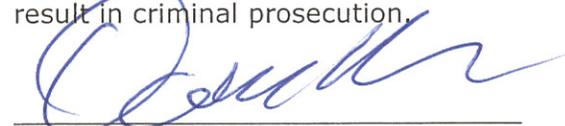
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I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Darin Borders d/b/a Loma Linda Subdivision and Matt Boren d/b/a Loma Linda Subdivision, and 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.



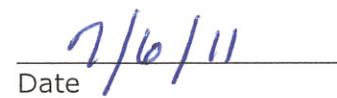
Signature - Darin Borders



\_\_\_\_\_  
Date



Signature - Matt Boren



\_\_\_\_\_  
Date