

Executive Summary – Enforcement Matter – Case No. 41309
DAVE'S ROOFING, SIDING AND METAL BUILDINGS, LLC
RN101190007
Docket No. 2011-0435-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

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

Media:

PWS

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

707 Highway 62, Wolfforth, Lubbock 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: \$5,379

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$5,379

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: N/A

Compliance History Classifications:

Person/CN – N/A

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: January 20, 2011
Date(s) of NOV(s): See Compliance History – 9 NOVs
Date(s) of NOE(s): March 9, 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, and failed to provide public notice of the failure to collect repeat distribution samples [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 for the month following a total coliform positive sample result, and failed to provide public notice of the failure to conduct increased monitoring [30 TEX. ADMIN. CODE §§290.109(c)(2)(F) and 290.122(c)(2)(B)].
3. Failed to comply with the Acute Maximum Contaminant Level (“AMCL”) for total coliform bacteria in September 2010, and failed to provide public notice for exceeding the AMCL for the month of September 2010 [30 TEX. ADMIN. CODE §§ 290.109(f)(1)(B) and 290.122(a)(2)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
N/A

Technical Requirements:

1. Within 10 days begin complying with applicable coliform monitoring requirements by collecting required 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 30 days, implement procedures to ensure all necessary public notifications are provided in a timely manner to the customers of the Facility.
3. Within 195 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: April 27, 2011
Date Answer(s) Filed: May 13, 2011
SOAH Referral Date: June 14, 2011
Hearing Date(s):
Preliminary hearing: July 28, 2011
Evidentiary hearing: N/A
Settlement Date: July 11, 2011

Docket No. 2011-0435-PWS-E

Contact Information

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

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Katy Schumann, Water Enforcement Section, (512) 239- 2602

TCEQ Regional Contact: Patrick Cooke, Lubbock Regional Office, (806) 796-7092

Respondent: David Neufeld, President, Dave’s Roofing, Siding and Metal Buildings, LLC, 707 A West Highway 62-B2, Wolfforth, Texas 79382

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	14-Mar-2011	Screening	15-Mar-2011	EPA Due	28-Feb-2010
	PCW	15-Mar-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	DAVE'S ROOFING, SIDING AND METAL BUILDINGS, LLC
Reg. Ent. Ref. No.	RN101190007
Facility/Site Region	2-Lubbock
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	41309	No. of Violations	3
Docket No.	2011-0435-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Katy Schumann
		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	\$2,750
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	47.0% Enhancement	Subtotals 2, 3, & 7	\$1,292
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Notes	Enhancement for nine same/similar NOVs and one dissimilar NOV.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$1,340	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,275	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,042
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OTHER FACTORS AS JUSTICE MAY REQUIRE	33.1%	Adjustment	\$1,337
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Enhancement to recover the avoided costs of compliance.
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Final Penalty Amount	\$5,379
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,379
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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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.
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PAYABLE PENALTY	\$5,379
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Screening Date 15-Mar-2011

Docket No. 2011-0435-PWS-E

PCW

Respondent DAVE'S ROOFING, SIDING AND METAL BUILDING

Policy Revision 2 (September 2002)

Case ID No. 41309

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101190007

Media [Statute] Public Water Supply

Enf. Coordinator Katy Schumann

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>)	9	45%
	Other written NOVs	1	2%
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) 47%

>> **Repeat Violator (Subtotal 3)**

N/A

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

N/A

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for nine same/similar NOVs and one dissimilar NOV.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 47%

Screening Date 15-Mar-2011

Docket No. 2011-0435-PWS-E

PCW

Respondent DAVE'S ROOFING, SIDING AND METAL BUILDINGS, LLC

Policy Revision 2 (September 2002)

Case ID No. 41309

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101190007

Media [Statute] Public Water Supply

Enf. Coordinator Katy Schumann

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 August 2008, May 2009, June 2009, February 2010 and November 2010, and failed to provide public notice of the failure to collect repeat distribution samples in August 2008, May 2009, June 2009, February 2010 and November 2010.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: 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 5 150 Number of violation days

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event), mark only one with an x.

Violation Base Penalty \$1,250

Five monthly events are recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table with columns: Extraordinary, Ordinary, N/A, Before NOV, NOV to EDPRP/Settlement Offer.

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$608

Violation Final Penalty Total \$2,445

This violation Final Assessed Penalty (adjusted for limits) \$2,445

Economic Benefit Worksheet

Respondent DAVE'S ROOFING, SIDING AND METAL BUILDINGS, LLC
Case ID No. 41309
Req. Ent. Reference No. RN101190007
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				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]	\$500	28-Aug-2008	30-Nov-2010	3.18	\$79	\$500	\$579
Other (as needed)	\$25	30-Nov-2008	28-Feb-2011	3.16	\$4	\$25	\$29

Notes for AVOIDED costs

The avoided costs include the estimated cost to collect a total of twenty repeat water samples (\$25 per sample; four required per month) and provide public notice for the failure to collect the samples (\$5 per notice), calculated for the months in which no repeat samples were collected and during the period public notification was required.

Approx. Cost of Compliance

\$525

TOTAL

\$608

Screening Date 15-Mar-2011

Docket No. 2011-0435-PWS-E

PCW

Respondent DAVE'S ROOFING, SIDING AND METAL BUILDINGS, LLC

Policy Revision 2 (September 2002)

Case ID No. 41309

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101190007

Media [Statute] Public Water Supply

Enf. Coordinator Katy Schumann

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 September 2008, June 2009, July 2009, March 2010 and December 2010, and failed to provide public notice of the failure to conduct increased monitoring during the months of September 2008, June 2009, July 2009 and March 2010.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: 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 are protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 5 Number of violation days 153

Table for event frequency: daily, weekly, monthly (x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$1,250

Five monthly events are recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (x), (mark with x).

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$627 Violation Final Penalty Total \$2,445

This violation Final Assessed Penalty (adjusted for limits) \$2,445

Economic Benefit Worksheet

Respondent DAVE'S ROOFING, SIDING AND METAL BUILDINGS, LLC
Case ID No. 41309
Req. Ent. Reference No. RN101190007
Media Public Water Supply
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				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	20-Jan-2011	1-Sep-2011	0.61	\$3	n/a	\$3

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]	\$525	1-Jan-2009	31-Dec-2010	2.92	\$77	\$525	\$602
Other (as needed)	\$20	31-Dec-2008	30-Jun-2010	2.41	\$2	\$20	\$22

Notes for AVOIDED costs

The avoided costs include the estimated cost to conduct routine distribution sampling (21 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

\$645

TOTAL

\$627

Screening Date 15-Mar-2011

Docket No. 2011-0435-PWS-E

PCW

Respondent DAVE'S ROOFING, SIDING AND METAL BUILDINGS, LLC

Policy Revision 2 (September 2002)

Case ID No. 41309

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101190007

Media [Statute] Public Water Supply

Enf. Coordinator Katy Schumann

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(f)(1)(B) and 290.122(a)(2)

Violation Description Failed to comply with the Acute Maximum Contaminant Level ("AMCL") for total coliform bacteria and failed to provide public notice for exceeding the AMCL during the month of September 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	Harm			Percent
	Major	Moderate	Minor	
				0%

Matrix Notes As a result of the exceedance, persons served by this 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 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.

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 \$105

Violation Final Penalty Total \$489

This violation Final Assessed Penalty (adjusted for limits) \$489

Economic Benefit Worksheet

Respondent DAVE'S ROOFING, SIDING AND METAL BUILDINGS, LLC
Case ID No. 41309
Req. Ent. Reference No. RN101190007
Media Public Water Supply
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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	1-Sep-2010	30-Sep-2010	0.00	\$0	\$100	\$100
Other (as needed)	\$5	21-Sep-2010	22-Sep-2010	0.00	\$0	\$5	\$5

Notes for AVOIDED costs

The avoided costs include the estimated amount for additional oversight to properly treat the water to prevent the presence of coliform and to provide a public notice, calculated for the the month in which the exceedance occurred and public notice was required.

Approx. Cost of Compliance \$105

TOTAL \$105

Compliance History

Customer/Respondent/Owner-Operator: CN603273087 Dave's Roofing, Siding and Metal Buildings, LLC Classification: Rating:

Regulated Entity: RN101190007 DAVES ROOFING, SIDING & METAL BLDG Classification: Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1520189

Location: 707 HIGHWAY 62 UNIT A, WOLFFORTH, LUBBOCK COUNTY, TEXAS

TCEQ Region: REGION 02 - LUBBOCK

Date Compliance History Prepared: March 14, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 14, 2006 to March 14, 2011

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

Name: Katy Schumann Phone: (512) 239-2602

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 02/21/2007 (538867)
 - 2 07/23/2010 (842462)
 - 3 10/15/2010 (860246)
 - 4 01/21/2011 (892273)
 - 5 01/21/2011 (892281)
 - 6 02/18/2011 (893773)
 - 7 02/18/2011 (893799)
 - 8 02/18/2011 (893867)
 - 9 02/18/2011 (893875)
 - 10 02/18/2011 (893879)
 - 11 02/18/2011 (893906)
 - 12 02/18/2011 (893973)
 - 13 02/21/2011 (899654)
 - 14 03/09/2011 (899902)

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

Date: 10/10/2008 (892281) CN603273087
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)
Description: TCR Repeat Monitoring Violation 08/2008 - 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 08/2008 - Failure to post a public notice for not collecting all repeats following a coliform found result.

Date: 11/19/2008 (893773) CN603273087
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)
Description: TCR IC Routine Monitoring Violation 09/2008 - Failure to collect all 5 increase monitoring samples 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 Increase Monitoring Violation 09/2008 - Failure to post public notice for not collecting all 5 distribution samples following a coliform found month.

Date: 08/04/2009 (893799) CN603273087
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)
Description: TCR Repeat Monitoring Violation 06/2009 - 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 06/2009 - Failure to post a public notice for not collecting any repeats following a coliform found result.

Date: 09/16/2009 (893867) CN603273087
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)
Description: TCR Increase Monitoring Violation 07/2009 - Failure to collect all 5 increase monitoring samples 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 Increase Monitoring Violation 07/2009 - Failure to post public notice for not collecting all 5 increase monitoring samples following a coliform found month.

Date: 03/29/2010 (893875) CN603273087
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)
Description: TCR Repeat Monitoring Violation 02/2010 - 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 02/2010 - Failure to post a public notice for not collecting any repeats following a coliform found result.

Date: 05/03/2010 (893879) CN603273087
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)
Description: TCR Increase Monitoring Violation 03/2010 - Failure to collect all 5 increase monitoring samples 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 Increase Monitoring Violation 03/2010 - Failure to post public notice for not collecting all 5 increase monitoring samples following a coliform found month.

Date: 07/28/2010 (842462) CN603273087
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(r)
 Description: Failure to maintain or operate the system to provide a minimum pressure of 35 psi throughout the distribution system.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(M)
 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(N)
 30 TAC Chapter 290, SubChapter D 290.46(v)
 Description: Failure to provide adequate well construction.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.45(d)(2)(A)(ii)
 Description: Failure to provide the minimum required pressure tank capacity.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)
 Description: Failure to maintain all records of water works operation and maintenance.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter F 290.110(d)(1)(C)
 Description: Failure to provide a DPD method colorimeter accurate to within +/- 0.1 mg/L free chlorine.

Date: 09/21/2010 (893906) CN603273087
 Self Report? NO Classification: Major
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(1)(B)
 Description: TCR AMCL Violation 09/2010 - System received an Acute Maximum Contaminant Level (AMCL) Violation.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(a)(1)
 30 TAC Chapter 290, SubChapter F 290.122(a)(1)(A)
 Description: TCR PN AMCL Violation 09/2010 - Failure to post a public notice for exceeding an Acute Maximum Contaminant Level (AMCL) Violation.

Date: 01/04/2011 (893973) CN603273087
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)
 Description: TCR Repeat Monitoring Violation 11/2010 - 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 11/2010 - Failure to post a public notice for not collecting any repeats following a coliform found result.

Date: 02/11/2011 (899654) CN603273087
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)
 Description: TCR IC Monitoring Violation 12/2010 - Failure to collect all 5 increase monitoring samples following a coliform found month.

- 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DAVE'S ROOFING, SIDING AND
METAL BUILDINGS, LLC;
RN101190007**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2011-0435-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 Dave's Roofing, Siding and Metal Buildings, LLC ("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 a public water system located at 707 Highway 62 in Wolfforth, Lubbock County, Texas (the "Facility"). The Facility provides water for human consumption, has three 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 January 20, 2011, a TCEQ Public Drinking Water Program investigator documented that Respondent:
 - a. 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 August 2008, May 2009, June 2009,

February 2010, and November 2010, and failed to provide public notice of the failure to collect repeat distribution samples in August 2008, May 2009, June 2009, February 2010, and November 2010;

- b. Failed to collect a minimum of five distribution coliform samples the month following a total coliform positive sample result during the months of September 2008, June 2009, July 2009, March 2010, and December 2010, and failed to provide public notice of the failure to conduct increased monitoring during the months of September 2008, June 2009, July 2009, and March 2010; and
 - c. Failed to comply with the Acute Maximum Contaminant Level ("AMCL") for total coliform bacteria in September 2010, and failed to provide public notice for exceeding the AMCL for the month of September 2010.
3. Respondent received notice of the violations on or about March 14, 2011.

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 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 August 2008, May 2009, June 2009, February 2010, and November 2010, and failed to provide public notice of the failure to collect repeat distribution samples in August 2008, May 2009, June 2009, February 2010, and November 2010, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(ii) and 290.122(c)(2)(B).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to collect a minimum of five distribution coliform samples the month following a total coliform positive sample result during the months of September 2008, June 2009, July 2009, March 2010, and December 2010, and failed to provide public notice of the failure to conduct increased monitoring during the months of September 2008, June 2009, July 2009, and March 2010, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(B).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to comply with the AMCL for total coliform bacteria in September 2010, and failed to provide public notice for exceeding the AMCL for the month of September 2010, in violation of 30 TEX. ADMIN. CODE §§ 290.109(f)(1)(B) and 290.122(a)(2).
5. 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.
6. An administrative penalty in the amount of five thousand three hundred seventy-nine dollars (\$5,379.00) 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 five thousand three hundred seventy-nine dollars (\$5,379.00) 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. 6, 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 begin complying with applicable coliform monitoring requirements by collecting required 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 30 days after the effective date of this Agreed Order, Respondent shall 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 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 Nos. 2.a. and 2.b. 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:

Public Drinking Water Section Manager
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

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.

07/11/2011 09:42 FAX 5122393434

TCEQ Legal Services

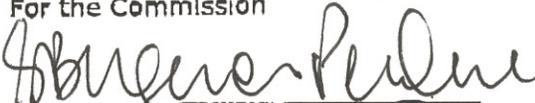
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Dave's Roofing, Siding & Metal Buildings, LLC
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

7/29/2011

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 Dave's Roofing, Siding & Metal Buildings, LLC, 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 - David Neufeld, President and Director
Dave's Roofing, Siding and Metal Buildings, LLC

7-11-11

Date