EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-1066-PWS-E **TCEQ ID:** RN101406999 **CASE NO.:** 39957

RESPONDENT NAME: Harris County Water Control and Improvement District No. 119

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
X PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Harris County Water Control and Improvement District No. 119, 9711 Landry Boulevard, Spring, Harris County

TYPE OF OPERATION: Public water supply

SMALL BUSINESS: ___ Yes X No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

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

COMMENTS RECEIVED: The *Texas Register* comment period expired on December 20, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Ms. Katy Schumann, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-2602; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495

Respondent: Mr. William E. Eckert, President, Harris County Water Control and Improvement District No. 119, P.O. Box 579, Spring, Texas 77383

Respondent's Attorney: Mr. Brad Castleberry, Lloyd Gosselink Attorneys at Law, 816 Congress Avenue, Suite 1900, Austin, Texas 78701

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint X Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** April 14, 2010 **Date of NOV/NOE Relating to this Case:** June 14, 2010 (NOE) **Background Facts:** This was a routine investigation. **WATER** Failed to provide an elevated storage capacity of 100 gallons per connection [30 TEX. ADMIN. CODE § 290.45(b)(1)(D)(iv) and TEX. HEALTH AND SAFETY CODE § 341.0315(c)].	**Total Assessed:** $1,500 **Total Deferred:** $300 X Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $1,200 **Compliance History Classifications:** Person/CN - Average Site/RN – N/A **Major Source:** X Yes __ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Within 180 days after the effective date of this Agreed Order, obtain approval of an alternative capacity requirement to the elevated storage requirement; or b. Within 700 days after the effective date of this Agreed Order, in the event approval for an alternative capacity is not granted pursuant to Ordering Provision a, provide an elevated storage capacity of 100 gallons per connection; and c. Within 195 days or 715 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a or b, respectively.

Additional ID No(s).: PWS ID 1010509

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES					
Assigned	21-Jun-2010				
PCW	28-Jun-2010	Screening	25-Jun-2010	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Harris County Water Control and Improvement District No. 119		
Reg. Ent. Ref. No.	RN101406999		
Facility/Site Region	12-Houston	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	39957	No. of Violations	1
Docket No.	2010-1066-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
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* $1,500

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0.0% Enhancement — *Subtotals 2, 3, & 7* $0

Notes: No enhancement due to compliance history.

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

Notes: The Respondent does not meet the culpability criteria.

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

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

Total EB Amounts $49,517
Approx. Cost of Compliance $584,155

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $1,500

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% — *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $1,500

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $1,500

DEFERRAL 20.0% Reduction — *Adjustment* -$300

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $1,200

Screening Date 25-Jun-2010 **Docket No.** 2010-1066-PWS-E **PCW**

Respondent Harris County Water Control and Improvement District N

Policy Revision 2 (September 2002)

Case ID No. 39957

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101406999

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 NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No enhancement due to compliance history.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 25-Jun-2010 **Docket No.** 2010-1066-PWS-E **PCW**

Respondent Harris County Water Control and Improvement District No. 119 *Policy Revision 2 (September 2002)*

Case ID No. 39957 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN101406999

Media [Statute] Public Water Supply

Enf. Coordinator Katy Schumann

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.45(b)(1)(D)(iv) and Tex. Health and Safety Code § 341.0315(c)

Violation Description Failed to provide an elevated storage capacity of 100 gallons per connection. Specifically, at the time of the investigation, it was documented that the Facility serves 2,717 connections and is required to provide an elevated storage capacity of 271,700 gallons. However, the Facility currently provides no elevated storage capacity, which is a deficiency of 100%.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Major	Moderate	Minor
Actual			
Potential	x		

Harm

Percent 50%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failure to provide adequate elevated storage capacity may result in an inadequate supply of water pressure, which could lead to backflow and siphonage, thereby exposing consumers to a significant amount of contaminants which would exceed levels protective of human health.

Adjustment $500

$500

Violation Events

Number of Violation Events 3 | 71 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $1,500

Three monthly events are recommended, calculated from the date of the investigation, April 14, 2010, to the date of screening, June 25, 2010.

Good Faith Efforts to Comply

0.0% Reduction $0

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

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

Violation Subtotal $1,500

Economic Benefit (EB) for this violation

Estimated EB Amount $49,517

Statutory Limit Test

Violation Final Penalty Total $1,500

This violation Final Assessed Penalty (adjusted for limits) $1,500

Economic Benefit Worksheet

Respondent Harris County Water Control and Improvement District No. 119
Case ID No. 39957
Reg. Ent. Reference No. RN101406999
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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	$584,155	14-Apr-2010	30-Jun-2011	1.21	$2,358	$47,159	$49,517
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 costs include the estimated costs to engineer and construct a 271,700 gallon elevated water storage tank ($2.15/gallon), calculated from the date of the investigation 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]				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0

Notes for AVOIDED costs:

Approx. Cost of Compliance: $584,155

TOTAL: $49,517

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600741672	Harris County Water Control and Improvement District No. 119	Classification: AVERAGE	Rating: 0.16
Regulated Entity:	RN101406999	HARRIS COUNTY WCID No. 119	Classification:	Site Rating:

ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	1010509
	WATER LICENSING	LICENSE	1010509

Location: 9711 LANDRY BLVD, SPRING, HARRIS COUNTY, TX, 77379

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: June 28, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 28, 2005 to June 28, 2010

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 judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 03/20/2006 (454401)
2 06/15/2010 (799178)

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

N/A

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	**§**	**BEFORE THE**
ENFORCEMENT ACTION	**§**	
CONCERNING	**§**	
HARRIS COUNTY WATER	**§**	**TEXAS COMMISSION ON**
CONTROL AND IMPROVEMENT	**§**	
DISTRICT NO. 119	**§**	
RN101406999	**§**	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2010-1066-PWS-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Harris County Water Control and Improvement District No. 119 ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent, represented by Brad Castleberry of Lloyd Gosselink Attorneys at Law, appear before the Commission and together stipulate that:

1. The Respondent owns and operates a public water supply at 9711 Landry Boulevard in Spring, Harris County, Texas (the "Facility") that has 2,717 service connections and serves at least 25 people per day for at least 60 days per year.

2. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

3. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 19, 2010.

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

5. An administrative penalty in the amount of One Thousand Five Hundred Dollars ($1,500) is assessed by the Commission in settlement of the violations alleged in Section

II ("Allegations"). The Respondent has paid One Thousand Two Hundred Dollars ($1,200) of the administrative penalty and Three Hundred Dollars ($300) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

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

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

8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

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

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to provide an elevated storage capacity of 100 gallons per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(D)(iv) and TEX. HEALTH AND SAFETY CODE § 341.0315(c), as documented during an investigation conducted on April 14, 2010.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Harris County Water Control and Improvement District No. 119, Docket No. 2010-1066-PWS-E" to:

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

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

   a. Within 180 days after the effective date of this Agreed Order, obtain approval of an alternative capacity requirement to the elevated storage requirement, in accordance with 30 TEX. ADMIN. CODE § 290.45(g); or

   b. Within 700 days after the effective date of this Agreed Order, in the event approval for an alternative capacity is not granted pursuant to Ordering Provision No. 2.a, provide an elevated storage capacity of 100 gallons per connections, in accordance with 30 TEX. ADMIN. CODE § 290.45(b); and

   c. Within 195 days or 715 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a, or 2.b, respectively. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

      "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

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

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

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

6. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 11/22/2010
For the Executive Director Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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

_____ October 11, 2010
Signature Date

William E. Eckert _____ President _____
Name (Printed or typed) Title
Authorized Representative of
Harris County Water Control and Improvement District No. 119

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.