

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-1417-PWS-E **TCEQ ID:** RN101251031 **CASE NO.:** 40303
RESPONDENT NAME: Millspaugh Operations, Inc.

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Pecos River Crossing Convenience Store, 18603 West Interstate Highway 10, approximately three miles north of Sheffield, Crockett County</p> <p>TYPE OF OPERATION: Convenience store and gasoline station with a public water supply</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 6, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Rebecca Clausewitz, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4012; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Ms. Sara M. Ingram, President, Millspaugh Operations, Inc., 301 Texas Bank Tower, San Angelo, Texas 76901 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: June 1, 2010</p> <p>Date of NOV/NOE Relating to this Case: June 28, 2010 (NOE)</p> <p>Background Facts: This was a records review.</p> <p>WATER</p> <p>1) Failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to conduct routine sampling [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(ii) and 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.033(d)].</p> <p>2) Failed to comply with the maximum contaminant level ("MCL") for total coliform and failed to provide public notification of the exceedance of the MCL for total coliform [30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.031(a)].</p> <p>3) Failed to collect at least five routine distribution water samples for coliform analysis the month after recording a water sample with a coliform-positive result and failed to provide public notification of the failure to conduct increased monitoring [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(B)].</p>	<p>Total Assessed: \$3,093</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$3,093</p> <p>Compliance History Classification: Person/CN – Average Site/RN – Average</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification: The Respondent has three repeated enforcement actions over the prior five year period for the same violation.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that, as of December 1, 2008, the Facility ceased operating as a public water supply.</p>

Additional ID No(s): Public Water Supply ID No. 0530017



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	12-Jul-2010	Screening	4-Aug-2010	EPA Due	31-May-2009
	PCW	13-Aug-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Millsbaugh Operations, Inc.
Reg. Ent. Ref. No.	RN101251031
Facility/Site Region	8-San Angelo
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	40303	No. of Violations	3
Docket No.	2010-1417-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rebecca Clausewitz
		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** **\$1,750**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **54.0%** Enhancement **Subtotals 2, 3, & 7** **\$945**

Notes: Enhancement for six prior NOVs with same/similar violations, two dissimilar NOVs, and one prior agreed formal enforcement order containing a denial of liability.

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 \$398
Approx. Cost of Compliance \$385
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$2,695**

OTHER FACTORS AS JUSTICE MAY REQUIRE **14.8%** **Adjustment** **\$398**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided costs of compliance.

Final Penalty Amount **\$3,093**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$3,093**

DEFERRAL **0.0%** Reduction **Adjustment** **\$0**

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

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$3,093**

Screening Date 4-Aug-2010

Docket No. 2010-1417-PWS-E

PCW

Respondent Millspaugh Operations, Inc.

Policy Revision 2 (September 2002)

Case ID No. 40303

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101251031

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

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>)	6	30%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	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%

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) 54%

>> 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

Enhancement for six prior NOVs with same/similar violations, two dissimilar NOVs, and one prior agreed formal enforcement order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 54%

Screening Date 4-Aug-2010

Docket No. 2010-1417-PWS-E

PCW

Respondent Millspaugh Operations, Inc.

Policy Revision 2 (September 2002)

Case ID No. 40303

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101251031

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 1

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

Violation Description Failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to conduct routine sampling for the months of January 2008 and August through November 2008.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%
Failure to conduct routine sampling and provide public notice could result in customers of the facility becoming exposed to significant amounts of undetected contaminants, which would exceed levels protective of human health.					

Adjustment \$750

\$250

Violation Events

Number of Violation Events 5 Number of violation days 152

mark only one with an x	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

	Before NOV	NOV to EDRP/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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$163

Violation Final Penalty Total \$2,209

This violation Final Assessed Penalty (adjusted for limits) \$2,209

Economic Benefit Worksheet

Respondent Millspaugh Operations, Inc.
Case ID No. 40303
Reg. Ent. Reference No. RN101251031
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment			0.00	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0
Engineering/construction			0.00	\$0	\$0	\$0
Land			0.00	\$0	n/a	\$0
Record Keeping System			0.00	\$0	n/a	\$0
Training/Sampling			0.00	\$0	n/a	\$0
Remediation/Disposal			0.00	\$0	n/a	\$0
Permit Costs			0.00	\$0	n/a	\$0
Other (as needed)			0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal			0.00	\$0	\$0	\$0	
Personnel			0.00	\$0	\$0	\$0	
Inspection/Reporting/Sampling			0.00	\$0	\$0	\$0	
Supplies/equipment			0.00	\$0	\$0	\$0	
Financial Assurance [2]			0.00	\$0	\$0	\$0	
ONE-TIME avoided costs [3]							
Other (as needed)							
	\$125	31-Jan-2008	30-Nov-2008	1.75	\$11	\$125	\$136
	\$25	1-May-2008	28-Feb-2009	1.75	\$2	\$25	\$27

Notes for AVOIDED costs

The one-time avoided costs include the estimated amount to collect one routine sample per month (\$25), calculated for the months in which no samples were taken. The other avoided cost includes the estimated amount to post public notice (\$5 per notice), calculated for the period in which notice should have been provided.

Approx. Cost of Compliance

\$150

TOTAL

\$163

Screening Date 4-Aug-2010

Docket No. 2010-1417-PWS-E

PCW

Respondent Millspaugh Operations, Inc.

Policy Revision 2 (September 2002)

Case ID No. 40303

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101251031

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code §§ 290.109(f)(3) and 290.122(b)(2)(B) and Tex. Health & Safety Code § 341.031(a)

Violation Description

Failed to comply with the maximum contaminant level ("MCL") for total coliform and failed to provide public notification of the exceedance of the MCL for total coliform for the month of June 2008.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%

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

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1 Number of violation days 30

mark only one with an x	daily	
	weekly	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$250

One monthly event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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 \$442

This violation Final Assessed Penalty (adjusted for limits) \$442

Economic Benefit Worksheet

Respondent: Millspaugh Operations, Inc.
Case ID No.: 40303
Reg. Ent. Reference No.: RN101251031
Media: Public Water Supply
Violation No.: 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment			0.00	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0
Engineering/construction			0.00	\$0	\$0	\$0
Land			0.00	\$0	n/a	\$0
Record Keeping System			0.00	\$0	n/a	\$0
Training/Sampling			0.00	\$0	n/a	\$0
Remediation/Disposal			0.00	\$0	n/a	\$0
Permit Costs			0.00	\$0	n/a	\$0
Other (as needed)			0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal			0.00	\$0	\$0	\$0
Personnel			0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.00	\$0	\$0	\$0
Supplies/equipment			0.00	\$0	\$0	\$0
Financial Assurance [2]			0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	1-Jun-2008	30-Jun-2008	0.00	\$0	\$100
Other (as needed)	\$5	1-Aug-2008	1-Aug-2008	0.00	\$0	\$5

Notes for AVOIDED costs

The one-time avoided cost includes the estimated amount for additional sampling and oversight that could have prevented or alleviated the exceedance, calculated for the month in which the exceedance occurred. The other avoided cost includes the estimated amount to post public notice (\$5 per notice), calculated for the period in which notice should have been provided.

Approx. Cost of Compliance

\$105

TOTAL

\$105

Screening Date 4-Aug-2010

Docket No. 2010-1417-PWS-E

PCW

Respondent Millspaugh Operations, Inc.

Policy Revision 2 (September 2002)

Case ID No. 40303

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101251031

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 3

Rule Cite(s)

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

Violation Description

Failed to collect at least five routine distribution water samples for coliform analysis the month after recording a water sample with a coliform-positive result and failed to provide public notification of the failure to conduct increased sampling for the month of July 2008.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to conduct increased sampling and provide public notice could result in customers of the facility becoming exposed to significant amounts of undetected contaminants, which would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1

31 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$250

One monthly event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$130

Violation Final Penalty Total \$442

This violation Final Assessed Penalty (adjusted for limits) \$442

Economic Benefit Worksheet

Respondent: Millspaugh Operations, Inc.
Case ID No.: 40303
Reg. Ent. Reference No.: RN101251031
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]	\$125	31-Jul-2008	31-Jul-2008	0.00	\$0	\$125	\$125
Other (as needed)	\$5	1-Nov-2008	1-Nov-2008	0.00	\$0	\$5	\$5

Notes for AVOIDED costs

The one-time avoided cost includes the estimated amount to conduct increased routine sampling (\$25 per sample), calculated for the month in which no samples were taken. The other avoided cost includes the estimated amount to post public notice (\$5 per month), calculated for the period in which notice should have been provided.

Approx. Cost of Compliance

\$130

TOTAL

\$130

Compliance History Report

Customer/Respondent/Owner-Operator: CN602282790 Millspaugh Operations, Inc. Classification: AVERAGE Rating: 27.60

Regulated Entity: RN101251031 PECOS RIVER CROSSING CONVENIENCE STORE Classification: AVERAGE Site Rating: 27.60

ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 2334
PUBLIC WATER SYSTEM/SUPPLY SITE REGISTRATION 0530017

Location: 18603 West Interstate Highway 10, approx. three miles N of Sheffield, Crockett County, Texas

TCEQ Region: REGION 08 - SAN ANGELO

Date Compliance History Prepared: July 26, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 26, 2005 to July 26, 2010

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Rebecca Clausewitz Phone: (210) 403-4012

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 10/25/2007 ADMINORDER 2007-0205-PST-E
Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)
30 TAC Chapter 334, SubChapter C 334.50(b)(2)
Description: Failure to perform release detection on piping according to 30 TAC 334.50(b)(2)(G).

Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.3475(a)
30 TAC Chapter 334, SubChapter C 334.50(b)(2)(A)(i)(III)
Description: Failure to annually test the line leak detectors according to 30 TAC 334.50(b)(2)(A)(i)(III).

- B. Any criminal convictions of the state of Texas and the federal government.
N/A

- C. Chronic excessive emissions events.
N/A

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

1	01/10/2007	(535649)
2	05/16/2008	(655010)
3	07/02/2008	(684431)
4	07/15/2008	(682717)
5	12/09/2008	(710275)
6	01/23/2009	(710142)
7	06/05/2009	(745324)
8	06/09/2010	(826342)
9	06/10/2010	(826462)
10	06/10/2010	(826468)
11	06/10/2010	(826492)
12	06/10/2010	(826522)
13	06/10/2010	(826530)
14	07/07/2010	(826604)

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

Date: 03/11/2008 (826342)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 01/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 01/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 05/16/2008 (655010)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)
Description: Failure to secure a sanitary control easement for the well.

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: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(D)
Description: Failure to exclude livestock at least 50 feet from the well.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(M)
Description: Failure to provide a sampling cock on the discharge pipe of the well, prior to any treatment.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.43(d)(2)
Description: Failure to provide a pressure release device for the pressure tanks.

Date: 06/23/2008 (826462)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)
Description: TCR MCL Violation 06/2008 - System exceeded a Maximum Contaminant Level (MCL) Violation.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(b)(2)(B)
Description: TCR PN MCL Violation 06/2008 - Failure to post a public notice for exceeding a Maximum Contaminant Level (MCL) Violation.

Date: 09/03/2008 (826468)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)
Description: TCR Increase Monitoring Violation 07/2008 - Failure to collect any of the 5 distribution 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 07/2008 - Failure to post public notice for not collecting any of the 5 distribution samples following a coliform found month.

Date: 10/10/2008 (826492)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 08/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 08/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 11/19/2008 (826522) Classification: Moderate
Self Report? NO
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 09/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 09/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 12/09/2008 (826530) Classification: Moderate
Self Report? NO
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 10/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 10/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 01/23/2009 (710142) CN602282790 Classification: Minor
Self Report? NO
Citation: 30 TAC Chapter 334, SubChapter A 334.7(d)(3)
Description: Failure to update Registration Form.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.49(c)(2)(C)
30 TAC Chapter 334, SubChapter C 334.54(c)(1)
Description: Failure to observe rectifier readings at least once every 60 days.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.54(b)(2)
Description: Failure to properly secure UST's against tampering or vandalism.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.49(c)(2)(A)
Description: Failure to adequately protect the UST system from corrosion.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.54(d)(2)
Description: Failure to drain the diesel tank sufficiently to meet the definition of "empty."

- 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
MILLSPAUGH OPERATIONS, INC.
RN101251031**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2010-1417-PWS-E**

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Millspaugh Operations, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The 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, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement 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 the Respondent.

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

I. FINDINGS OF FACT

1. The Respondent owns a convenience store and gasoline station with a public water supply at 18603 West Interstate Highway 10, approximately three miles north of Sheffield in Crockett County, Texas (the "Facility") that has one service connection and served at least 25 people per day for at least 60 days per year.
2. During a record review conducted on June 1, 2010, TCEQ staff documented that the Respondent did not collect routine distribution water samples for coliform analysis and did not provide public notification of the failure to conduct routine sampling for the months of January 2008 and August through November 2008.

3. During a record review conducted on June 1, 2010, TCEQ staff documented that the Respondent did not comply with the maximum contaminant level ("MCL") for total coliform and did not provide public notification of the exceedance of the MCL for total coliform for the month of June 2008.
4. During a record review conducted on June 1, 2010, TCEQ staff documented that the Respondent did not collect at least five routine distribution water samples for coliform analysis the month after recording a water sample with a coliform-positive result and provide public notification of the failure to conduct increased sampling for the month of July 2008.
5. The Respondent received notice of the violations in a letter dated June 28, 2010.
6. The Executive Director recognizes that, as of December 1, 2008, the Facility ceased operating as a public water supply.

II. CONCLUSIONS OF LAW

1. The 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 Findings of Fact No. 2, the Respondent failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to conduct routine sampling, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(ii) and 290.122(c)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. As evidenced by Findings of Fact No. 3, the Respondent failed to comply with the MCL for total coliform and failed to provide public notification of the exceedance of the MCL for total coliform, in violation of 30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.031(a).
4. As evidenced by Findings of Fact No. 4, the Respondent failed to collect at least five routine distribution water samples for coliform analysis the month after recording a water sample with a coliform-positive result and failed to provide public notification of the failure to conduct increased monitoring, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(B).
5. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code 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 Three Thousand Ninety-Three Dollars (\$3,093) 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(b). The Respondent has paid the Three Thousand Ninety-Three Dollar (\$3,093) administrative penalty.

III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Three Thousand Ninety-Three Dollars (\$3,093) as set forth in Section II, Paragraph 6 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Millspaugh Operations, Inc., Docket No. 2010-1417-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. 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.
3. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
4. 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.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature

affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

7. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Szolier
For the Executive Director

Date 11/3/2010

I, the undersigned, have read and understand the attached Agreed Order in the matter of Millspaugh Operations, Inc. I am authorized to agree to the attached Agreed Order on behalf of Millspaugh Operations, Inc., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Millspaugh Operations, Inc. waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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.

Sara M. Ingram
Signature

9-30-10
Date

Sara M. Ingram
Name (Printed or typed)
Authorized Representative of
Millspaugh Operations, Inc.

President, Millspaugh
Title Operations, Inc.

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

