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**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2009-1556-PWS-E **TCEQ ID:** RN101210037 **CASE NO.:** 38195  
**RESPONDENT NAME:** David L. Sheffield dba Texas Landing Utilities

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input 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	
<b>CASE TYPE:</b>		
<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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Texas Landing Utilities, 140 South Farm-to-Market Road 356, Polk County</p> <p><b>TYPE OF OPERATION:</b> Public water supply</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on January 4, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Andrea Linson-Mgbeoduru, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-1482; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. David L. Sheffield, Owner, Texas Landing Utilities, P.O. Box 2110, Onalaska, Texas 77360-2110  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> June 9, 2009</p> <p><b>Date of NOV/NOE Relating to this Case:</b> August 6, 2009 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WATER</b></p> <p>1) Failure to provide a total storage capacity of 200 gallons per connection [30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(ii) and TEX. HEALTH &amp; SAFETY CODE § 341.0315(c)].</p> <p>2) Failure to provide an overflow that shall be sized to handle the maximum possible fill rate without exceeding the capacity overflow for the Facility's ground storage tank [30 TEX. ADMIN. CODE § 290.43(c)(3)].</p> <p>3) Failure to calibrate the Facility's well meters at least once every three years [30 TEX. ADMIN. CODE § 290.46(s)(1)].</p>	<p><b>Total Assessed:</b> \$273</p> <p><b>Total Deferred:</b> \$54  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$219</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 90 days after the effective date of this Agreed Order:</p> <p>i. Provide the ground storage tank with an overflow that shall be sized to handle the maximum possible fill rate without exceeding the capacity overflow; and</p> <p>ii. Calibrate the well meter at Well No. 3.</p> <p>b. Submit written certification and include supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.</p> <p>c. Within 180 days after the effective date of this Agreed Order, provide a total storage capacity of 200 gallons per connection.</p> <p>d. Within 195 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 c.</p>

Additional ID No(s): PWS 1870151



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	Assigned PCW	4-Sep-2009	Screening	20-Aug-2009	EPA Due	
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<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	David L. Sheffield dba Texas Landing Utilities
Reg. Ent. Ref. No.	RN101210037
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	38195	No. of Violations	3
Docket No.	2009-1558-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Christopher Keffer
		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: \$200

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

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

**Compliance History** 10.0% Enhancement Subtotals 2, 3, & 7: \$20

Notes: Enhancement is due to two NOV's with the same or similar violations as those in the current enforcement action.

**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	\$855	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$10,570	

**SUM OF SUBTOTALS 1-7** Final Subtotal: \$220

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 24.1% Adjustment \$53

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to recovered avoided costs of compliance.

**Final Penalty Amount** \$273

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty: \$273

**DEFERRAL** 20.0% Reduction Adjustment -\$54

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

Notes: Deferral offered for expedited settlement.

**PAYABLE PENALTY** \$219

Screening Date 20-Aug-2009

Docket No. 2009-1556-PWS-E

PCW

Respondent David L. Sheffield dba Texas Landing Utilities

Policy Revision 2 (September 2002)

Case ID No. 38195

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101210037

Media [Statute] Public Water Supply

Enf. Coordinator Christopher Keffer

### 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)	2	10%
	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) 10%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement is due to two NOVs with the same or similar violations as those in the current enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 10%

Screening Date: 20-Aug-2009

Docket No. 2009-1556-PWS-E

PCW

Respondent: David L. Sheffield dba Texas Landing Utilities

Policy Revision 2 (September 2002)

Case ID No. 38195

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101210037

Media [Statute]: Public Water Supply

Enf. Coordinator: Christopher Keffer

Violation Number: 1

Rule Cite(s): 30 Tex. Admin. Code § 290.45(b)(1)(C)(II) and Tex. Health & Safety Code § 341.0315(c)

Violation Description: Failed to provide a total storage capacity of 200 gallons per connection. Specifically, at the time of the investigation, it was documented that the Facility has 144 service connections and must provide a minimum ground storage capacity of 26,600 gallons. The Facility had a ground storage capacity of 22,000, which is a 21% deficiency.

Base Penalty: \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential		x		

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes: Without adequate storage capacity, customers of the Facility could experience water outages and be exposed to a significant amount of contaminants that would not exceed levels protective of human health.

Adjustment: \$900

\$100

Violation Events

Number of Violation Events: 1 Number of violation days: 72

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty: \$100

One quarterly event is recommended from the date of the investigation, June 9, 2009, to the date of screening, August 20, 2009.

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: \$100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$889

Violation Final Penalty Total: \$137

This violation Final Assessed Penalty (adjusted for limits): \$137

## Economic Benefit Worksheet

**Respondent:** David L. Sheffield dba Texas Landing Utilities

**Case ID No.:** 38195

**Reg. Ent. Reference No.:** RN101210037

**Media:** Public Water Supply

**Violation No.:** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs.	Interest Saved	Onetime Costs	EB Amount
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**Delayed Costs**

Equipment	\$10,320	9-Jun-2009	1-Sep-2010	1.23	\$42	\$846	\$889
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

The delayed cost includes the amount to increase storage capacity to meet total storage capacity of 200 gallons per connection, 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

\$10,320

TOTAL

\$889

Screening Date 20-Aug-2009

Docket No. 2009-1556-PWS-E

PCW

Respondent David L. Sheffield dba Texas Landing Utilities

Policy Revision 2 (September 2002)

Case ID No. 38195

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101210037

Media [Statute] Public Water Supply

Enf. Coordinator Christopher Keffer

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 290.43(c)(3)

Violation Description

Failed to provide an overflow that shall be sized to handle the maximum possible fill rate without exceeding the capacity overflow for the Facility's ground storage tank. Specifically, at the time of the investigation, it was documented that the ground storage tank was equipped with a four-inch inlet pipe and a two-inch overflow pipe.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				5%
Potential			X	

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

Matrix Notes

Failing to provide an adequately sized overflow pipe would not allow the tank to handle the maximum possible fill rate without exceeding the capacity of the overflow pipe, thereby exposing the treated water in the tank to an insignificant amount of contaminants which would not exceed levels protective of human health.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 1 Number of violation days 72

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

Violation Base Penalty \$50

One single 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 \$50

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$14

Violation Final Penalty Total \$68

This violation Final Assessed Penalty (adjusted for limits) \$68

## Economic Benefit Worksheet

Respondent: David L. Sheffield cba Texas Landing Utilities

Case ID No. 38195

Reg. Ent. Reference No. RN101210037

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
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No commas or \$

### Delayed Costs

Equipment	\$200	9-Jun-2009	1-Jun-2010	0.98	\$1	\$13	\$14
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

The delayed costs include the amount to provide an adequate overflow pipe on the ground storage tank, 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

\$200

TOTAL

\$14

Screening Date 20-Aug-2009

Docket No. 2009-1556-PWS-E

PCW

Respondent David L. Sheffield dba Texas Landing Utilities

Policy Revision 2 (September 2002)

Case ID No. 38195

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101210037

Media: [Statute] Public Water Supply

Enf. Coordinator Christopher Keffer

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 290.46(s)(1)

Violation Description

Failed to calibrate the Facility's well meters at least once every three years. Specifically, an accuracy check performed on the flow meter for Well No. 3 revealed that the meter was not calibrated within the manufacturer's recommendations.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			X

Percent 5%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to accurately calibrate well meters could possibly contribute to an inadequate water supply because the operator cannot make the necessary production and usage calculations thereby exposing customers to an insignificant amount of contaminants that would not exceed levels protective of human health.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 1

72 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$50

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$50

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$53

Violation Final Penalty Total \$68

This violation Final Assessed Penalty (adjusted for limits) \$68

# Economic Benefit Worksheet

**Respondent:** David L. Sheffield dba Texas Landing Utilities  
**Case ID No.:** 38195  
**Reg. Ent. Reference No.:** RN101210037  
**Media:** Public Water Supply  
**Violation No.:** 3

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**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  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]	\$50	9-Jun-2009	20-Aug-2009	1.12	\$3	\$50	\$53
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the amount to have the well meter calibrated, calculated from the date of the investigation to the screening date.

Approx. Cost of Compliance

\$50

**TOTAL**

\$53

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600653406 SHEFFIELD, DAVID L. Classification: AVERAGE Rating: 0.63  
Regulated Entity: RN101210037 TEXAS LANDING UTILITIES Classification: Site Rating:  
  
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1870151  
WATER LICENSING LICENSE 1870151  
Location: 140 South FM 356, Polk County, TX,  
TCEQ Region: REGION 10 - BEAUMONT  
Date Compliance History Prepared: March 23, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: September 21, 2004 to September 21, 2009  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Andrea Linson-Mgbeoduru Phone: (512) 239-1482

## Site Compliance History Components

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

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court 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.)  
N/A
  - 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  
ENFORCEMENT ACTION  
CONCERNING DAVID L. SHEFFIELD  
DBA TEXAS LANDING UTILITIES  
RN101210037

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

AGREED ORDER  
DOCKET NO. 2009-1556-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 David L. Sheffield dba Texas Landing Utilities ("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 appear before the Commission and together stipulate that:

1. The Respondent owns and operates a public water supply at 140 South Farm-to-Market Road 356, in Polk County, Texas (the "Facility") that has approximately 144 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 August 11, 2009.
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 Two Hundred Seventy-Three Dollars (\$273) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Hundred Nineteen Dollars (\$219) of the administrative penalty and Fifty-Four Dollars (\$54) 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:

1. Failed to provide a total storage capacity of 200 gallons per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(ii) and TEX. HEALTH & SAFETY CODE § 341.0315(c), as documented during an investigation conducted on June 9, 2009.
2. Failed to provide an overflow that shall be sized to handle the maximum possible fill rate without exceeding the capacity overflow for the Facility's ground storage tank, in violation of 30 TEX. ADMIN. CODE § 290.43(c)(3), as documented during an investigation conducted on June 9, 2009.
3. Failed to calibrate the Facility's well meters at least once every three years, in violation of 30 TEX. ADMIN. CODE § 290.46(s)(1), as documented during an investigation conducted on June 9, 2009.

## **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: David L. Sheffield dba Texas Landing Utilities, Docket No. 2009-1556-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 90 days after the effective date of this Agreed Order:
    - i. Provide the ground storage tank with an overflow that shall be sized to handle the maximum possible fill rate without exceeding the capacity overflow, in accordance with 30 TEX. ADMIN. CODE § 290.43; and
    - ii. Calibrate the well meter at Well No. 3, in accordance with 30 TEX. ADMIN. CODE § 290.46.
  - b. Submit written certification as described in Ordering Provision No. 2.d below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.
  - c. Within 180 days after the effective date of this Agreed Order, provide a total storage capacity of 200 gallons per connection, in accordance with 30 TEX. ADMIN. CODE § 290.45.
  - d. Within 195 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.c. 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 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 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  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1892

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

John Zedler  
For the Executive Director

11/22/2010  
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.

David L. Sheffield  
Signature

10-22-10  
Date

David L. Sheffield  
Name (Printed or typed)  
Authorized Representative of  
David L. Sheffield dba Texas Landing Utilities

OWNER  
Title

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.

