# EXECUTIVE SUMMARY - ENFORCEMENT MATTER



**DOCKET NO.:** 2010-1610-PWS-E **TCEQ ID:** RN101387033 **CASE NO.:** 40478

**RESPONDENT NAME:** City of Avinger

| 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:** City of Avinger, 6 North Main Street, Avinger, Cass County

**TYPE OF OPERATION:** Public water supply

**SMALL BUSINESS:** ___ Yes X No

**OTHER SIGNIFICANT MATTERS:** A complaint was received on July 13, 2010 alleging the water was turned off in the City for several hours and when service was restored, the water was very dirty. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on January 24, 2011. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney/SEP Coordinator:** None
**TCEQ Enforcement Coordinator:** Ms. Kelly Wisian, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-2570; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
**Respondent:** The Honorable Marvin E. Parvino, Mayor, City of Avinger, P.O. Box 356, Avinger, Texas 75630
**Respondent's Attorney:** Not represented by counsel on this enforcement matter

## VIOLATION SUMMARY CHART:

| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
|---|---|---|
| **Type of Investigation:**<br>X Complaint<br>__ Routine<br>__ Enforcement Follow-up<br>__ Records Review<br><br>**Date(s) of Complaints Relating to this Case:** July 13, 2010<br><br>**Date of Investigation Relating to this Case:** July 15, 2010 and July 19, 2010<br><br>**Date of NOV/NOE Relating to this Case:** September 17, 2010 (NOE)<br><br>**Background Facts:** This was a complaint investigation.<br><br>**WATER**<br><br>1) Failed to issue a boil water notification within 24 hours using the prescribed format as specified in 30 TEX. ADMIN. CODE § 290.47(e) [30 TEX. ADMIN. CODE § 290.46(q)(1) and TEX. HEALTH & SAFETY CODE § 341.033(b)].<br><br>2) Failed to ensure that the repaired distribution facilities were placed back into service with the prior guidance and approval of a licensed water works operator [30 TEX. ADMIN. CODE § 290.46(e)(2)(A)]. | **Total Assessed:** $630<br><br>**Total Deferred:** $126<br>X Expedited Settlement<br><br>__Financial Inability to Pay<br><br>**SEP Conditional Offset:** $0<br><br>**Total Paid to General Revenue:** $504<br><br>**Compliance History Classifications:**<br>Person/CN - Average<br>Site/RN – N/A<br><br>**Major Source:** __ Yes X No<br><br>**Applicable Penalty Policy:** September 2002 | **Corrective Actions Taken:**<br><br>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility as of July 19, 2010:<br><br>a. Implemented procedures to ensure boil water notifications will be issued when required; and<br><br>b. Implemented procedures to ensure that any repairs to the distribution Facilities are under the guidance of the Respondent's operator when required. |

Additional ID No(s).: PWS 0340002

# Penalty Calculation Worksheet (PCW)

TCEQ

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

| DATES | | | | | |
|---|---|---|---|---|---|
| Assigned | 20-Sep-2010 | | | | |
| PCW | 21-Sep-2010 | Screening | 21-Sep-2010 | EPA Due | |

**RESPONDENT/FACILITY INFORMATION**

| | | | |
|---|---|---|---|
| Respondent | City of Avinger | | |
| Reg. Ent. Ref. No. | RN101387033 | | |
| Facility/Site Region | 5-Tyler | Major/Minor Source | Minor |

**CASE INFORMATION**

| | | | |
|---|---|---|---|
| Enf./Case ID No. | 40478 | No. of Violations | 2 |
| Docket No. | 2010-1610-PWS-E | Order Type | 1660 |
| Media Program(s) | Public Water Supply | Government/Non-Profit | Yes |
| Multi-Media | | Enf. Coordinator | Kelly Wisian |
| | | 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* $500

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

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

**Compliance History** 26.0% Enhancement — *Subtotals 2, 3, & 7* $130

Notes: Enhancement for three dissimilar NOVs and one final agreed 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 $101
Approx. Cost of Compliance $700

**Capped at the Total EB $ Amount*

**SUM OF SUBTOTALS 1-7** — *Final Subtotal* $630

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

*Final Penalty Amount* $630

**STATUTORY LIMIT ADJUSTMENT** — *Final Assessed Penalty* $630

**DEFERRAL** 20.0% Reduction — *Adjustment* -$126

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** $504

**Screening Date** 21-Sep-2010 **Docket No.** 2010-1610-PWS-E **PCW**

**Respondent** City of Avinger

**Case ID No.** 40478

**Reg. Ent. Reference No.** RN101387033

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Kelly Wisian

*Policy Revision 2 (September 2002)*

*PCW Revision October 30, 2008*

# 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 (*number of NOVs meeting criteria*) | 0 | 0% |
| | Other written NOVs | 3 | 6% |
| Orders | Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*) | 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 (*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)*** 26%

## >> 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 three dissimilar NOVs and one final agreed order containing a denial of liability.

***Total Adjustment Percentage (Subtotals 2, 3, & 7)*** 26%

**Screening Date** 21-Sep-2010 **Docket No.** 2010-1610-PWS-E **PCW**

**Respondent** City of Avinger *Policy Revision 2 (September 2002)*

**Case ID No.** 40478 *PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101387033

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Kelly Wisian

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 290.46(q)(1) and Tex. Health & Safety Code § 341.033(b)

**Violation Description** Failed to issue a boil water notification within 24 hours using the prescribed format as specified in 30 Tex. Admin. Code § 290.47(e). Specifically, at the time of the record review, it was documented that the Facility did not issue a boil water notification within 24 hours in response to a loss of pressure in the distribution system and a water outage on July 13, 2010.

**Base Penalty** $1,000

## >> Environmental, Property and Human Health Matrix

OR

| Release | Harm: Major | Moderate | Minor |
|---|---|---|---|
| Actual | | | |
| Potential | x | | |

**Percent** 25%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | | | |

**Percent** 0%

Matrix Notes: Failure to issue a boil water notice may prevent the public from taking the appropraite measures necessary in response to the delivery of water that may contain a significant amount of contaminants which would exceed levels protective of human health.

**Adjustment** $750

$250

## Violation Events

Number of Violation Events 1 | 4 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| weekly | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | x |

**Violation Base Penalty** $250

One single event is recommended for the incident that occurred on July 13, 2010.

## 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

**Estimated EB Amount** $100

## Statutory Limit Test

**Violation Final Penalty Total** $315

**This violation Final Assessed Penalty (adjusted for limits)** $315

# Economic Benefit Worksheet

**Respondent** City of Avinger
**Case ID No.** 40478
**Reg. Ent. Reference No.** RN101387033
**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 | $100 | 15-Jul-2010 | 19-Jul-2010 | 0.01 | $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 estimated amount to update the standard operating procedure to ensure boil water notices are issued in a timely manner, calculated from the date of the investigation to the 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] | $100 | 13-Jul-2010 | 14-Jul-2010 | 0.00 | $0 | $100 | $100 |
| Other (as needed) | | | | 0.00 | $0 | $0 | $0 |

**Notes for AVOIDED costs** The avoided cost includes the estimated amount necessary to provide a boil water notice to customers of the Facility, calculated for the 24 hour period following the water outage and/or low pressure occurences.

**Approx. Cost of Compliance** $200

**TOTAL** $100

**Screening Date** 21-Sep-2010 **Docket No.** 2010-1610-PWS-E **PCW**

**Respondent** City of Avinger *Policy Revision 2 (September 2002)*

**Case ID No.** 40478 *PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101387033

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Kelly Wisian

**Violation Number** 2

**Rule Cite(s)** 30 Tex. Admin. Code § 290.46(e)(2)(A)

**Violation Description** Failed to ensure that the repaired distribution facilities were placed back into service with the prior guidance and approval of a licensed water works operator. Specifically, at the time of the record review, the investigator documented that the Facility was placed back into service without the guidance and approval of a licensed water works operator after repairs were made to the distribution system.

**Base Penalty** $1,000

## >> Environmental, Property and Human Health Matrix

| OR | Release | Harm: Major | Moderate | Minor |
|---|---|---|---|---|
| | Actual | | | |
| | Potential | x | | |

**Percent** 25%

## >>Programmatic Matrix

| Falsification | Major | Moderate | Minor |
|---|---|---|---|
| | | | |

**Percent** 0%

Matrix Notes: Failure to return new or repaired distribution facilities to service without prior guidance and approval from a licensed water operator could expose customers to a significant amount of pollutants that would exceed levels protective of human health.

**Adjustment** $750

$250

## Violation Events

Number of Violation Events 1 | 1 Number of violation days

*mark only one with an x*

| | |
|---|---|
| daily | |
| weekly | |
| monthly | |
| quarterly | |
| semiannual | |
| annual | |
| single event | x |

**Violation Base Penalty** $250

One single event is recommended for the incident that occurred on July 13, 2010.

## 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

**Estimated EB Amount** $1

## Statutory Limit Test

**Violation Final Penalty Total** $315

**This violation Final Assessed Penalty (adjusted for limits)** $315

# Economic Benefit Worksheet

**Respondent** City of Avinger
**Case ID No.** 40478
**Reg. Ent. Reference No.** RN101387033
**Media** Public Water Supply
**Violation No.** 2

| Percent Interest | Years of Depreciation |
|---|---|
| 5.0 | 15 |

| Item Description (No commas or $) | Item Cost | 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 | | | | 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 |
| **Avoided Costs** (ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)) | | | | | | | |
| Disposal | | | | 0.00 | $0 | $0 | $0 |
| Personnel | $500 | 13-Jul-2010 | 14-Jul-2010 | 0.00 | $0 | $1 | $1 |
| 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 DELAYED costs**

**Notes for AVOIDED costs** The avoided cost includes the estimated amount required to ensure that a certified water works operator supervises and approves repairs made to the distribution system prior to placing the distribution system back into service, calculated from the date of non-compliance.

**Approx. Cost of Compliance** $500

**TOTAL** $1

# Compliance History Report

| | | | | |
|---|---|---|---|---|
| Customer/Respondent/Owner-Operator: | CN600253033 | City of Avinger | Classification: AVERAGE | Rating: 1.54 |
| Regulated Entity: | RN101387033 | CITY OF AVINGER | Classification: | Site Rating: |
| ID Number(s): | PUBLIC WATER SYSTEM/SUPPLY | | REGISTRATION | 0340002 |
| | WATER LICENSING | | LICENSE | 0340002 |

Location: 6 NORTH MAIN STREET, AVINGER, CASS COUNTY, TX

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: September 21, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 21, 2005 to September 21, 2010

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

Name: Kelly Wisian Phone: (512) 239 - 2570

## Site Compliance History Components

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

## Components (Multimedia) for the Site :

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

Effective Date: 11/03/2006 ADMINORDER 2006-0289-PWS-E

Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(q)(1)
Description: Failure to issue a boil water notification to the customers of the water supply within 24 hours after a break in a water main and an outage occurred.

Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(h)
Description: Failure to maintain a supply of calcium hypochlorite on hand for use when making repairs to the water lines.

Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(e)(3)(A)
5A THC Chapter 341, SubChapter A 341.033(a)
Description: Failure by a water supply which serves no more than 250 connections and uses only purchased treated water to employ a water works operator that holds a Class D or higher operator's license.

Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.44(d)(5)
Description: Failure to provide a sufficient number of valves in the distribution system so that necessary repairs can be made to the system without undue interruption of service over a considerable area.

Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(iii)
Description: Failure of the public water supply to maintain its operating records, including records of water quality, pressure, or outage complaints received by the system and the results of any subsequent complaint investigations.

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 12/10/2007 (611314)
2 02/25/2008 (617602)
3 04/23/2008 (646465)

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

Date: 02/26/2008 (617602) CN600253033
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(l)
Description: Failure to maintain a written Plant Operations Manual.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)
Description: Failure to maintain copies of the Monitoring Plan at each water treatment plant and at a central location available for review.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(iii)
Description: Failure to maintain written complaint logs.

Date: 04/30/2008 (646465) CN600253033
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(l)
Description: Failure to maintain a written Plant Operations Manual.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)
Description: Failure to maintain copies of the Monitoring Plan at each water treatment plant and at a central location available for review.

Date: 07/19/2010 (829652) CN600253033
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter F 290.110(b)(4)
Description: Failure to maintain a minimum chlorine residual of 0.5 mg/L (total) throughout the distribution system.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.44(d)(6)
Description: Failure to provide a flush valve on the 2-inch dead-end line located on Montgomery Street.

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** | **§** | **TEXAS COMMISSION ON** |
| **CITY OF AVINGER** | **§** | |
| **RN101387033** | **§** | **ENVIRONMENTAL QUALITY** |

**AGREED ORDER**
**DOCKET NO. 2010-1610-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 the City of Avinger ("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 6 North Main Street in Avinger, Cass County, Texas (the "Facility") that has approximately 240 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 September 22, 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 Six Hundred Thirty Dollars ($630) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Five Hundred Four Dollars ($504) of the administrative penalty and One Hundred Twenty-Six Dollars ($126) 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 recognizes that the Respondent has implemented the following corrective measures at the Facility as of July 19, 2010:

   a. Implemented procedures to ensure boil water notifications will be issued when required; and

   b. Implemented procedures to ensure that any repairs to the distribution Facilities are under the guidance of the City's operator when required.

9. 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.

10. 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.

11. 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 issue a boil water notification within 24 hours using the prescribed format as specified in 30 TEX. ADMIN. CODE § 290.47(e), in violation of 30 TEX. ADMIN. CODE § 290.46(q)(1) and TEX. HEALTH & SAFETY CODE § 341.033(b), as documented during an investigation conducted on July 15, 2010 and July 19, 2010.

2. Failed to ensure that the repaired distribution facilities were placed back into service with the prior guidance and approval of a licensed water works operator, in violation of 30 TEX. ADMIN. CODE § 290.46(e)(2)(A), as documented during an investigation conducted on July 15, 2010 and July 19, 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: City of Avinger, Docket No. 2010-1610-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. This Agreed Order, issued by the Commission, shall not be admissible against the City of Avinger 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.

4. 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.

5. 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

_____ 12/16/2010
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.

_____ Nov 10, 2010
Signature Date

MARVIN E. PARVIN MAYOR
Name (Printed or typed) Title
Authorized Representative of
City of Avinger

**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.