

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2010-1374-PWS-E **TCEQ ID:** RN101193043 **CASE NO.:** 40258  
**RESPONDENT NAME:** Sebastian Municipal Utility District

<b>ORDER TYPE:</b>		
<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	
<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> Sebastian MUD, 235 West Second Street, Sebastian, Willacy County</p> <p><b>TYPE OF OPERATION:</b> Public water supply</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input 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 24, 2011. 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. Ricardo Javier Martinez, President, Sebastian Municipal Utility District, P.O. Box B, Sebastian, Texas 78594  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<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 2, 2010 to June 7, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> August 2, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WATER</b></p> <p>1) Failed to maintain all the ground storage tanks ("GSTs") in strict accordance with American Water Works Association ("AWWA") standards [30 TEX. ADMIN. CODE § 290.43(c)(8)].</p> <p>2) Failed to provide a full-face self-contained breathing apparatus ("SCBA") or supplied air respirator that meets Occupational Safety and Health Administration standards for construction and operation that is readily accesible outside the chlorination room [30 TEX. ADMIN. CODE § 290.42(e)(4)(A)].</p>	<p><b>Total Assessed:</b> \$2,895</p> <p><b>Total Deferred:</b> \$0  <input 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> \$2,895</p> <p><b>Compliance History Classification:</b>            Person/CN – High            Site/RN – N/A</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>Findings Orders Justification:</b>            The Respondent has three repeated enforcement actions over the prior five year period for the same violation.</p>	<p><b>Corrective Actions Taken:</b>            The Executive Director recognizes that, as of September 24, 2010, the Respondent recharged the oxygen cylinder for the SCBA.</p> <p><b>Ordering Provisions:</b>            The Order will require the Respondent to:</p> <p>a. Within 180 days after the effective date of this Agreed Order, provide GSTs constructed in strict accordance with AWWA standards with the appropriate appurtenances, including but not limited to overflows that terminate with a tightly fitted gravity-hinged and weighted cover with no gap over 1/16 inch; and</p> <p>b. 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 a.</p>

Additional ID No(s): Public Water Supply ID No. 2450006



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	9-Aug-2010			
	<b>PCW</b>	19-Aug-2010	<b>Screening</b>	19-Aug-2010	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	Sebastian Municipal Utility District				
<b>Reg. Ent. Ref. No.</b>	RN101193043				
<b>Facility/Site Region</b>	15-Harlingen	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	40258	<b>No. of Violations</b>	2		
<b>Docket No.</b>	2010-1374-PWS-E	<b>Order Type</b>	Findings		
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	Yes		
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Andrea Linson-Mgbeodu		
		<b>EC's Team</b>	Enforcement Team 2		
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000		

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$2,250
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	32.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$720
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Notes: Enhancement for four same/similar NOV's, one dissimilar NOV and one agreed final enforcement order containing a denial of liability and reduction for high performer classification.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$75
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$56,314  
 Approx. Cost of Compliance: \$646,420  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$2,895
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	\$2,895
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$2,895
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	\$2,895
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Screening Date 19-Aug-2010

Docket No. 2010-1374-PWS-E

PCW

Respondent Sebastian Municipal Utility District

Policy Revision 2 (September 2002)

Case ID No. 40258

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101193043

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson-Mgbeoduru

### 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> )	4	20%
	Other written NOVs	1	2%
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%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 42%

>> Repeat Violator (Subtotal 3)

No

**Adjustment Percentage (Subtotal 3)** 0%

>> Compliance History Person Classification (Subtotal 7)

High Performer

**Adjustment Percentage (Subtotal 7)** -10%

>> Compliance History Summary

**Compliance History Notes**

Enhancement for four same/similar NOVs, one dissimilar NOV and one agreed final enforcement order containing a denial of liability and reduction for high performer classification.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 32%

Screening Date 19-Aug-2010

Docket No. 2010-1374-PWS-E

PCW

Respondent Sebastian Municipal Utility District

Policy Revision 2 (September 2002)

Case ID No. 40258

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101193043

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson-Mgbeoduru

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.43(c)(8)

Violation Description Failed to maintain all ground storage tanks ("GST") in strict accordance with current American Water Works Association ("AWWA") standards. Specifically, at the time of the investigation, it was documented that the Facility's two GSTs are extremely corroded and that the overflow valve piping had fallen off one of the tanks.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor). Potential Major has an 'x'.

Percent 25%

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor. All are empty.

Percent 0%

Matrix Notes Failure to maintain the Facility's GSTs in strict accordance with AWWA standards may expose consumers to a significant amount of contaminants which would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 6

78 Number of violation days

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

Violation Base Penalty \$1,500

Six monthly events are recommended (three monthly events for each tank), calculated from the investigation date, June 2, 2010, to the screening date, August 19, 2010.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A. N/A is marked with x.

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

Violation Subtotal \$1,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$56,283

Violation Final Penalty Total \$1,980

This violation Final Assessed Penalty (adjusted for limits) \$1,980

## Economic Benefit Worksheet

**Respondent** Sebastian Municipal Utility District  
**Case ID No.** 40258  
**Reg. Ent. Reference No.** RN101193043  
**Media** Public Water Supply  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$645,000	2-Jun-2010	31-Aug-2011	1.25	\$2,680	\$53,603	\$56,283
Engineering/construction				0.00	\$0	n/a	\$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 estimated amount necessary to provide GSTs that meet AWWA standards calculated from the investigation date to the estimated date of compliance.

### Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$645,000

**TOTAL**

\$56,283

Screening Date 19-Aug-2010

Docket No. 2010-1374-PWS-E

PCW

Respondent Sebastian Municipal Utility District

Policy Revision 2 (September 2002)

Case ID No. 40258

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101193043

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson-Mgbeoduru

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 290.42(e)(4)(A)

Violation Description

Failed to provide a full-face self-contained breathing apparatus ("SCBA") or supplied air respirator that meets Occupational Safety and Health Administration ("OSHA") standards for construction and operation that is readily accessible outside the chlorination room. Specifically, at the time of the investigation, it was documented that the oxygen tank for the SCBA was empty.

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 have a full-face self-contained breathing apparatus or supplied air respirator that meets OSHA standards in the event of an emergency could expose employees to significant amounts of chlorine gas that would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 3

78 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$750

Three monthly events are recommended, calculated from the investigation date, June 2, 2010, to the screening date, August 19, 2010.

Good Faith Efforts to Comply

10.0% Reduction

\$75

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

Notes The Respondent achieved compliance on September 24, 2010.

Violation Subtotal \$675

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$31

Violation Final Penalty Total \$915

This violation Final Assessed Penalty (adjusted for limits) \$915

## Economic Benefit Worksheet

**Respondent** Sebastian Municipal Utility District  
**Case ID No.** 40258  
**Reg. Ent. Reference No.** RN101193043  
**Media** Public Water Supply  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$1,420	2-Jun-2010	24-Sep-2010	0.31	\$1	\$30	\$31
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 estimated amount necessary to provide a full-face self-contained breathing apparatus or supplied air respirator that meets OSHA standards for construction and operation, calculated from the investigation date 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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance

\$1,420

**TOTAL**

\$31

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600638993 Sebastian Municipal Utility District Classification: HIGH Rating: 0.05  
Regulated Entity: RN101193043 SEBASTIAN MUD Classification: Site Rating:  
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2450006  
WATER LICENSING LICENSE 2450006  
Location: 235 WEST SECOND STREET, SEBASTIAN, WILLACY COUNTY, TEXAS  
TCEQ Region: REGION 15 - HARLINGEN  
Date Compliance History Prepared: August 19, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: August 16, 2005 to August 16, 2010  
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 judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 02/05/2006

ADMINORDER 2005-1358-PWS-E

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(5)  
5A THC Chapter 341, SubChapter A 341.0315(c)

Description: Violated the MCL for HAA5 in the fourth quarter of 2004.

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)  
5A THC Chapter 341, SubChapter A 341.0315(c)

Description: Violated the MCL for TTHM in the fourth quarter of 2004.

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)  
5A THC Chapter 341, SubChapter A 341.0315(c)

Description: Violated the MCL for TTHM in the third quarter of 2004.

- 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 09/07/2005 (405316)

2 03/28/2006 (457266)

3 04/11/2007 (542899)

4 08/03/2007 (569418)

5 04/10/2008 (670339)

6 05/14/2008 (642020)

7 10/06/2008 (704167)

8 05/06/2009 (737260)

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

Date: 03/28/2006 (457266) CN600638993  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(8)  
Description: Failure to maintain all ground storage tanks in strict accordance with current AWWA standards.

Date: 04/10/2007 (542899) CN600638993  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(8)  
Description: Failure to maintain all ground storage tanks in strict accordance with current AWWA standards.

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(4)  
Description: Failure to maintain water treatment units in a air tight condition.

Date: 04/10/2008 (670339) CN600638993  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(4)  
Description: BACT - MONITORING/REPORTING VIOLATIONS

Date: 05/16/2008 (642020) CN600638993  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(8)  
Description: Failure to maintain all ground storage tanks in strict accordance with current AWWA standards.

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(13)  
Description: Failure to label chemical feed lines.

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)  
Description: Failure to ensure good working condition of all system's facilities and equipment.

Date: 04/07/2009 (737260) CN600638993  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(8)  
Description: Failure to maintain all ground storage tanks in strict accordance with current AWWA standards.

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.42(m)  
Description: Failure to enclose the water treatment plant and all appurtenances thereof with an intruder- resistant locked fence or locked building during periods of darkness or when the plant is not attended.

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(4)(A)  
Description: Failure to provide a full face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration (OSHA) standards for construction and operation.

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(B)(iv)  
Description: Failure to calibrate online turbidimeters at least once each week with a primary standard, a secondary standard, or the manufacturer's proprietary calibration confirmation device or by comparing the results from the online unit with the results from a properly calibrated benchtop unit.

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



<b>IN THE MATTER OF AN</b>	<b>§</b>	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	<b>§</b>	
<b>CONCERNING</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>SEBASTIAN MUNICIPAL UTILITY</b>	<b>§</b>	
<b>DISTRICT</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>RN101193043</b>	<b>§</b>	

## **AGREED ORDER DOCKET NO. 2010-1374-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 Sebastian Municipal Utility District (“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 and operates a public water supply at 235 West Second Street in Sebastian, Willacy County, Texas (the “Facility”) that has approximately 599 service connections and serves at least 25 people per day for at least 60 days per year.

2. During an investigation conducted from June 2, 2010 to June 7, 2010, TCEQ staff documented that the Respondent did not maintain all ground storage tanks ("GSTs") in strict accordance with current American Water Works Association ("AWWA") standards. Specifically, at the time of the investigation, it was documented that the Facility's two GSTs are extremely corroded and that the overflow valve piping had fallen off one of the tanks.
3. During an investigation conducted from June 2, 2010 to June 7, 2010, TCEQ staff documented that the Respondent did not provide a full-face self-contained breathing apparatus ("SCBA") or supplied air respirator that meets Occupational Safety and Health Administration ("OSHA") standards for construction and operation that is readily accessible outside the chlorination room. Specifically, at the time of the investigation, it was documented that the oxygen tank for the SCBA was empty.
4. The Respondent received notice of the violations on August 9, 2010.
5. The Executive Director recognizes that, as of September 24, 2010, the Respondent recharged the oxygen cylinder for the SCBA.

## **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 maintain all the GSTs in strict accordance with AWWA standards, in violation of 30 TEX. ADMIN. CODE § 290.43(c)(8).
3. As evidenced by Findings of Fact No. 3, the Respondent failed to provide a full-face SCBA or supplied air respirator that meets OSHA standards for construction and operation that is readily accessible outside the chlorination room, in violation of 30 TEX. ADMIN. CODE § 290.42(e)(4)(A).
4. 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.
5. An administrative penalty in the amount of Two Thousand Eight Hundred Ninety-Five Dollars (\$2,895) 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 Two Thousand Eight Hundred Ninety-Five Dollar (\$2,895) 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 Two Thousand Eight Hundred Ninety-Five Dollars (\$2,895) as set forth in Section II, Paragraph 5 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: Sebastian Municipal Utility District, Docket No. 2010-1374-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 Respondent shall undertake the following technical requirements:
  - a. Within 180 days after the effective date of this Agreed Order, provide GSTs constructed in strict accordance with AWWA standards with the appropriate appurtenances, including but not limited to overflows that terminate with a tightly fitted gravity-hinged and weighted cover with no gap over 1/16 inch, in accordance with 30 TEX. ADMIN. CODE § 290.43; and
  - b. 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.a. 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  
Harlingen Regional Office  
Texas Commission on Environmental Quality  
1804 West Jefferson Avenue  
Harlingen, Texas 78550-5247

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. 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.
6. 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.
7. 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.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and

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

9. 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.

Sebastian Municipal Utility District  
DOCKET NO. 2010-1374-PWS-E  
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## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

John Szelen  
For the Executive Director

2/23/2011  
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Sebastian Municipal Utility District. I am authorized to agree to the attached Agreed Order on behalf of Sebastian Municipal Utility District, 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, Sebastian Municipal Utility District 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.

→ Ricardo Javier Martinez 2-16-11  
Signature Date

→ Ricardo Javier Martinez President  
Name (Printed or typed) Title  
Authorized Representative of  
Sebastian Municipal Utility District

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