

Executive Summary – Enforcement Matter – Case No. 40468  
Cecil D. Hutcheson  
RN105972061  
Docket No. 2010-1596-WOC-E

**Order Type:**  
Default Order

**Findings Order Justification:**  
N/A

**Media:**  
WOC

**Small Business:**  
Yes

**Location Where Violation Occurred:**  
2201 Research Boulevard, Lubbock, Lubbock County

**Type of Operation:**  
Public water supply

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

**Texas Register Publication Date:** April 29, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$625

**Amount Deferred for Expedited Settlement:** N/A

**Amount Deferred for Financial Inability to Pay:** N/A

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$625

**SEP Conditional Offset:** N/A

**Compliance History Classifications:**  
Person/CN – N/A  
Site/RN – N/A

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

Cecil. D. Hutcheson

RN105972061

Docket No. 2010-1596-WOC-E

***Investigation Information***

**Complaint Date:** N/A  
**Complaint Information:** N/A  
**Date of Investigation:** August 2, 2010  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** August 4, 2010

***Violation Information***

Failed to obtain a valid public water system operator license prior to performing process control duties in the production, treatment, and distribution of public drinking water [TEX. WATER CODE § 37.003, TEX. HEALTH & SAFETY CODE § 341.034(b), and 30 TEX. ADMIN. CODE §§ 30.5(a) and 30.381(b)].

***Corrective Actions/Technical Requirements***

**Corrective Action Completed:**

Respondent obtained a Class “D” water operator license on August 10, 2010.

**Technical Requirements:**

N/A

***Litigation Information***

**Date Petition Filed:** February 10, 2011  
**Date Green Card Signed:** February 12, 2011  
**Date Answer Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Dates:** N/A

***Contact Information***

**TCEQ Attorneys:** Marshall Coover, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400

**TCEQ SEP Coordinator:** N/A

**TCEQ Enforcement Coordinator:** Epifanio Villareal, Water Enforcement Section, (361) 825-3425

**TCEQ Regional Contact:** PatrickCooke, Lubbock Regional Office, MC R-2, (806) 796- 7092

**Respondent:** Cecil Hutcheson, 702 77<sup>th</sup> Street, Lubbock, Texas 79404

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	27-Sep-2010		
	<b>PCW</b>	10-Jan-2011	<b>Screening</b>	27-Sep-2010
			<b>EPA Due</b>	

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Cecil D. Hutcheson
<b>Reg. Ent. Ref. No.</b>	RN105972061
<b>Facility/Site Region</b>	2-Lubbock
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	40468	<b>No. of Violations</b>	1
<b>Docket No.</b>	2010-1596-WOC-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	All Occupational Licenses	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Epifanio Villarreal
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$2,500

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$625
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<b>ADJUSTMENTS (+/-) TO SUBTOTAL 1</b>	
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.	
<b>Compliance History</b>	0.0% Enhancement <b>Subtotals 2, 3, &amp; 7</b>
Notes	No adjustment for compliance history.
<b>Culpability</b>	No 0.0% Enhancement <b>Subtotal 4</b>
Notes	The Respondent does not meet the culpability criteria.
<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>
<b>Economic Benefit</b>	0.0% Enhancement* <b>Subtotal 6</b>
Total EB Amounts	\$0
Approx. Cost of Compliance	\$111
*Capped at the Total EB \$ Amount	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$625
<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0% <b>Adjustment</b>	\$0
Reduces or enhances the Final Subtotal by the indicated percentage.		
Notes		
	<b>Final Penalty Amount</b>	\$625
<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$625
<b>DEFERRAL</b>	0.0% Reduction <b>Adjustment</b>	\$0
Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)		
Notes	Deferral not offered for non-expedited settlement.	

<b>PAYABLE PENALTY</b>	\$625
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**Screening Date** 27-Sep-2010

**Docket No.** 2010-1596-WOC-E

**PCW**

**Respondent** Cecil D. Hutcheson

*Policy Revision 2 (September 2002)*

**Case ID No.** 40468

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN105972061

**Media [Statute]** All Occupational Licenses

**Enf. Coordinator** Epifanio Villarreal

### 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> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	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 ( <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)** 0%

**>> Repeat Violator (Subtotal 3)**

N/A

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

**>> Compliance History Person Classification (Subtotal 7)**

N/A

**Adjustment Percentage (Subtotal 7)** 0%

**>> Compliance History Summary**

**Compliance History Notes**

No adjustment for compliance history.

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

Screening Date 27-Sep-2010

Docket No. 2010-1596-WOC-E

PCW

Respondent Cecil D. Hutcheson

Policy Revision 2 (September 2002)

Case ID No. 40468

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105972061

Media [Statute] All Occupational Licenses

Enf. Coordinator Epifanio Villarreal

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 30.5(a) and 30.381(b), Tex. Water Code § 37.003 and Tex. Health & Safety Code § 341.034(b)

Violation Description Failed to obtain a valid public water system operator license prior to performing process control duties in the production, treatment, and distribution of public drinking water. Specifically, at the time of the investigation, it was documented that the Respondent was operating the public water system at Elm Grove Mobile Home Park without a valid license.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

Matrix Notes

Failing to have the required license to operate the Facility could result in improper operation of the Facility and improper treatment of water which could expose human health or the environment to significant amounts of pollutants that exceed levels protective of human health.

Adjustment \$1,875

\$625

Violation Events

Number of Violation Events 1 8 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$625

One monthly event is recommended calculated from the date of the investigation, August 2, 2010, to the date of compliance, August 10, 2010.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$625

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$625

This violation Final Assessed Penalty (adjusted for limits) \$625

# Economic Benefit Worksheet

**Respondent** Cecil D. Hutcheson  
**Case ID No.** 40468  
**Req. Ent. Reference No.** RN105972061  
**Media Violation No.** All Occupational Licenses  
 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

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)	\$111	2-Aug-2010	10-Aug-2010	0.02	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the amount to apply for and obtain a Class "D" water operator license, 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]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$111

**TOTAL**

\$0

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN600747547 HUTCHESON, CECIL D	Classification:	Rating:
Regulated Entity:	RN105972061 HUTCHESON, CECIL D	Classification:	Site Rating:
ID Number(s):	WATER LICENSING LICENSE		WO0028599
Location:	2201 RESEARCH BOULEVARD, LUBBOCK COUNTY, TX		
TCEQ Region:	REGION 02 - LUBBOCK		
Date Compliance History Prepared:	September 27, 2010		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	September 27, 2005 to September 27, 2010		

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

Name: Epi Villarreal Phone: (361) 825-3425

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 09/20/2010 (844308)
  - 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

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CECIL D. HUTCHESON;  
RN105972061**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2010-1596-WOC-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 37, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is Cecil D. Hutcheson ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns and operates a public water supply located at 2201 Research Boulevard in Lubbock, Lubbock County, Texas (the "Facility"). The Facility provides water for human consumption and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(66).
2. Respondent performs process control duties in the production, treatment, or distribution of public drinking water at the Facility, as defined in 30 TEX. ADMIN. CODE § 290.38(63). Therefore, Respondent is subject to TCEQ jurisdiction pursuant to TEX. WATER CODE ch. 37 and TEX. HEALTH & SAFETY CODE ch. 341.
3. During an investigation conducted on August 2, 2010, a TCEQ Lubbock Regional Office investigator documented that Respondent failed to obtain a valid public water system operator license prior to performing process control duties in the production, treatment, and distribution of public drinking water. Specifically, Respondent was operating the Facility without a valid license.
4. Respondent received notice of the violation on or about August 9, 2010.
5. The Executive Director recognizes that on August 10, 2010, Respondent obtained a Class "D" water operator license.
6. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Cecil D. Hutcheson," (the "EDPRP") in the TCEQ Chief Clerk's office on February 10, 2011.

7. By letter dated February 10, 2011, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on February 12, 2011, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent failed to file an answer and failed to request a hearing.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Findings of Fact Nos. 1 and 2, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 37, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Respondent failed to obtain a valid public water system operator license prior to performing process control duties in the production, treatment, and distribution of public drinking water, in violation of TEX. WATER CODE § 37.003, TEX. HEALTH & SAFETY CODE § 341.034(b), and 30 TEX. ADMIN. CODE §§ 30.5(a) and 30.381(b).
3. As evidenced by Findings of Fact Nos. 6 and 7, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 8, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of six hundred twenty-five dollars (\$625.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

#### **ORDERING PROVISIONS**

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

1. Respondent is assessed an administrative penalty in the amount of six hundred twenty-five dollars (\$625.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth

by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.

2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Cecil D. Hutcheson; Docket No. 2010-1596-WOC-E" to:

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

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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 Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF MARSHALL COOVER**

**STATE OF TEXAS**

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§  
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**COUNTY OF TRAVIS**

"My name is Marshall Coover. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Cecil D. Hutcheson," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on February 10, 2011.

The EDPRP was mailed to Respondent's last known address on February 10, 2011 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on February 12, 2011, as evidenced by the signature on the card.

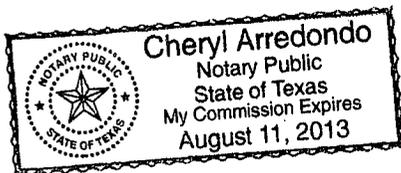
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."



Marshall Coover, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Marshall Coover, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 22<sup>nd</sup> day of March, A.D. 2011.



Notary Signature