

**Executive Summary – Enforcement Matter – Case No. 40150**  
**Gerald S. Smallwood d/b/a Highway 117 Water Supply Corporation**  
**RN101441053**  
**Docket No. 2010-1273-PWS-E**

**Order Type:**

Default Order Following SOAH Hearing

**Findings Order Justification:**

N/A

**Media:**

PWS

**Small Business:**

Yes

**Location Where Violation Occurred:**

Highway 117, south of Uvalde, Uvalde County

**Type of Operation:**

residential public water system

**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:** May 27, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$18,422

**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:** \$18,422

**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

**Executive Summary – Enforcement Matter – Case No. 40150**  
**Gerald S. Smallwood d/b/a Highway 117 Water Supply Corporation**  
**RN101441053**  
**Docket No. 2010-1273-PWS-E**

***Investigation Information***

**Complaint Date:** N/A  
**Date(s) of Investigation:** June 21, 2010  
**Date(s) of NOV(s):** See Compliance History – 28 NOVs  
**Date(s) of NOE(s):** July 27, 2010

***Violation Information***

Failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to conduct routine coliform monitoring for the months of January 2008 through April 2010 [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(ii) and 290.122(c)(2)(A) and TEX. HEALTH & SAFETY CODE § 341.033(d)].

***Corrective Actions/Technical Requirements***

**Corrective Action Completed:**  
N/A

**Technical Requirements:**

N/A – Respondent no longer operates the system.

***Litigation Information***

**Date(s) Petition(s) Filed:** September 24, 2010  
**Date(s) Answer(s) Filed:** October 14, 2010  
**SOAH Referral Date:** December 2, 2010  
**Hearing Date(s):**  
Preliminary hearing: February 10, 2011 (default)  
Evidentiary hearing: N/A

***Contact Information***

**TCEQ Attorneys:** Kari L. Gilbreth, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
**TCEQ Enforcement Coordinator:** Michaelle Sherlock, Water Enforcement Section, (210) 403-4076  
**TCEQ Regional Contact:** Lynn Bumguardner, San Antonio Regional Office, (210) 403- 4050  
**Respondent:** Gerald S. Smallwood, 516 CR 110, Uvalde, Texas 77801  
**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>	2-Aug-2010	<b>Screening</b>	4-Aug-2010	<b>EPA Due</b>	1-Mar-2009
	<b>PCW</b>	4-Aug-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>						
<b>Respondent</b>	Gerald S. Smallwood dba Highway 117 Water Supply Corporation					
<b>Reg. Ent. Ref. No.</b>	RN101441053					
<b>Facility/Site Region</b>	13-San Antonio	<b>Major/Minor Source</b>	Minor			

<b>CASE INFORMATION</b>						
<b>Enf./Case ID No.</b>	40150	<b>No. of Violations</b>	1			
<b>Docket No.</b>	2010-1273-PWS-E	<b>Order Type</b>	Findings			
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	No			
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Michaelle Sherlock			
		<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>	<b>\$7,000</b>
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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>	140.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$9,800</b>
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<b>Notes</b>	Enhancement for 28 prior NOV's with same/similar violations.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$1,624	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$1,500	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$16,800</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	9.7%	<b>Adjustment</b>	<b>\$1,622</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Enhancement to capture the avoided cost of compliance.
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<b>Final Penalty Amount</b>	<b>\$18,422</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$18,422</b>
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	No deferral is recommended for Findings Orders.
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<b>PAYABLE PENALTY</b>	<b>\$18,422</b>
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**Screening Date** 4-Aug-2010

**Docket No.** 2010-1273-PWS-E

**PCW**

**Respondent** Gerald S. Smallwood dba Highway 117 Water Sup

*Policy Revision 2 (September 2002)*

**Case ID No.** 40150

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101441053

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Michaelle Sherlock

### 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> )	28	140%
	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)** 140%

**>> 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**

Enhancement for 28 prior NOVs with same/similar violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 140%

Screening Date 4-Aug-2010

Docket No. 2010-1273-PWS-E

PCW

Respondent Gerald S. Smallwood dba Highway 117 Water Supply Corporati

Policy Revision 2 (September 2002)

Case ID No. 40150

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101441053

Media [Statute] Public Water Supply

Enf. Coordinator Michaelle Sherlock

Violation Number 1

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

Violation Description Failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to conduct routine coliform monitoring for the months of January 2008 through April 2010.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent

Failure to collect routine coliform monitoring and failure to provide notice could result in employees and customers of the Facility being exposed to significant amounts of undetected contaminants, which would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 28 850 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$7,000

Twenty-eight monthly events are recommended.

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 \$7,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,624

Violation Final Penalty Total \$18,422

This violation Final Assessed Penalty (adjusted for limits) \$18,422

## Economic Benefit Worksheet

**Respondent** Gerald S. Smallwood dba Highway 117 Water Supply Corporation  
**Case ID No.** 40150  
**Req. Ent. Reference No.** RN101441053  
**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

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)	\$100	21-Jun-2010	1-Jan-2011	0.53	\$3	n/a	\$3

Notes for DELAYED costs

The delayed cost includes the estimated amount to develop a protocol to ensure all necessary public notifications are provided in a timely manner. The date required is the record review date. The final date is 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]	\$700	31-Jan-2008	30-Apr-2010	3.16	\$111	\$700	\$811
Other (as needed)	\$700	1-May-2008	1-Aug-2010	3.17	\$111	\$700	\$811

Notes for AVOIDED costs

The avoided costs include the estimated amount to conduct routine monthly sampling (\$25 per sample) and the estimated amount to provide public notice to the Facility's customers (\$25 per notice), calculated for the months in which routine sampling and public notice did not occur.

Approx. Cost of Compliance

\$1,500

**TOTAL**

\$1,624

# Compliance History Report

Customer/Respondent/Owner-Operator: CN602197881 SMALLWOOD, GERALD S Classification: Rating:  
Regulated Entity: RN101441053 HIGHWAY 117 WSC Classification: Site Rating:  
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2320040  
Location: S OF UVALDE ON HWY 117, UVALDE COUNTY, TEXAS  
TCEQ Region: REGION 13 - SAN ANTONIO  
Date Compliance History Prepared: August 03, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: August 03, 2005 to August 03, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:  
Name: Michaele Sherlock Phone: (210) 403-4076

## 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? Yes
3. If Yes, who is the current owner/operator? Gerald Smallwood
4. If Yes, who was/were the prior owner(s)/operator(s)? Highway 117 WSC
5. When did the change(s) in owner or operator occur? July 11, 2007

## 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	06/30/2010	(828803)
2	07/13/2010	(829966)
3	07/13/2010	(829972)
4	07/13/2010	(829978)
5	07/13/2010	(829986)
6	07/21/2010	(829981)
7	07/21/2010	(829990)
8	07/22/2010	(829961)
9	07/22/2010	(829995)
10	07/22/2010	(830009)
11	07/22/2010	(830015)
12	07/22/2010	(830018)
13	07/22/2010	(830026)
14	07/22/2010	(830040)
15	07/22/2010	(830044)
16	07/22/2010	(830045)
17	07/22/2010	(830046)
18	07/22/2010	(830068)
19	07/22/2010	(830069)
20	07/22/2010	(830071)
21	07/22/2010	(830072)
22	07/22/2010	(830074)
23	07/22/2010	(830075)
24	07/22/2010	(830077)
25	07/22/2010	(830080)
26	07/22/2010	(830085)
27	07/22/2010	(830088)
28	07/22/2010	(830095)
29	07/30/2010	(842649)

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

Date: 03/11/2008 (828803)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 01/2008 - Failure to collect any routine monitoring sample(s).  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 01/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 04/16/2008 (829961)

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 02/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 02/2008- Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 04/29/2008 (829966)

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 03/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 03/2008- Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 05/22/2008 (829972)

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 04/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 04/2008 - Failure to post public notice for not collecting any routine monitoring sample(s)

Date: 06/27/2008 (829978)

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 05/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 05/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 07/31/2008 (829981)

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 06/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 06/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 09/03/2008 (829986)

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 07/2008 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: TCR PN Routine Monitoring Violation 07/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 10/10/2008 (829990)

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

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

Date: 11/19/2008 (829995)

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

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

Date: 12/09/2008 (830009)

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

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

Date: 01/13/2009 (830015)

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

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: TCR PN Routine Monitoring Violation 11/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 03/09/2009 (830018)

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

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
Description: TCR PN Routine Monitoring Violation 12/2008 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 04/07/2009 (830026)

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)  
Description: TCR Routine Monitoring Violation 01/2009 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 01/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 05/06/2009 (830040)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 02/2009 - Failure to collect any routine monitoring sample(s).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 02/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 05/26/2009 (830044)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 03/2009 - Failure to collect any routine monitoring sample(s).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 03/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 06/15/2009 (830045)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 04/2009 - Failure to collect any routine monitoring sample(s).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 04/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 07/14/2009 (830046)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 05/2009 - Failure to collect any routine monitoring sample(s).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 05/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 08/04/2009 (830068)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 06/2009 - Failure to collect any routine monitoring sample(s).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 06/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 09/16/2009 (830069)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 07/2009 - Failure to collect any routine monitoring sample(s).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 07/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 10/02/2009 (830071)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 08/2009 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 08/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 11/05/2009 (830072)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 09/2009 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 09/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 12/08/2009 (830074)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 10/2009 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 10/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 01/13/2010 (830075)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 11/2009 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 11/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 01/26/2010 (830077)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 12/2009 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 12/2009 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 03/16/2010 (830080)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 01/2010 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 01/2010 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 03/29/2010 (830085)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 02/2010 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 02/2010 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 05/03/2010 (830088)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 03/2010 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 03/2010 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 06/10/2010 (830095)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)

Description: TCR Routine Monitoring Violation 04/2010 - Failure to collect any routine monitoring sample(s).

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)

Description: TCR PN Routine Monitoring Violation 04/2010 - Failure to post public notice for not collecting any routine monitoring sample(s).

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

K. Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
GERALD S. SMALLWOOD  
D/B/A HIGHWAY 117 WATER  
SUPPLY CORPORATION;  
RN101441053;**

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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2010-1273-PWS-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. 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 Gerald S. Smallwood d/b/a Highway 117 Water Supply Corporation<sup>1</sup> ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent operated a residential public water system located on Highway 117 South of Uvalde (legal description: A0331 ABSTRACT 0331 SURVEY 60 A-331 S-60) in Uvalde County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 63 service connections, 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. During a record review conducted on June 21, 2010, a TCEQ Central Office staff member documented that Respondent failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to conduct routine coliform monitoring for the months of January 2008 through April 2010.
3. Respondent received notice of the violation on or about August 1, 2010.
4. The Executive Director recognizes that Respondent no longer operates the Facility as of July 1, 2010.<sup>2</sup>
5. 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 Gerald S. Smallwood

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<sup>1</sup> The corporate charter for Highway 117 Water Supply Corporation ("Highway 117 WSC") was involuntarily dissolved on July 11, 2007, however, CCN 11625 issued to Highway 117 WSC naming Gerald S. Smallwood ("Mr. Smallwood") as the Responsible Official remains in effect, thus, Highway 117 Water Supply Corporation is being used as a trade name.

<sup>2</sup> The Facility is currently being operated by Adolfo Ramirez Jr., Class "D" Water Operator License No. WO0028520

d/b/a Highway 117 Water Supply Corporation" (the "EDPRP") in the TCEQ Chief Clerk's office on September 24, 2010.

6. Respondent filed an answer requesting a hearing on October 14, 2010, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on December 2, 2010.
7. On January 4, 2011, the TCEQ Chief Clerk mailed notice of the February 10, 2011, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.
8. On February 10, 2011, the Administrative Law Judge ("ALJ") convened the preliminary hearing, but Respondent failed to appear. The ALJ entered a finding that Respondent was served with proper notice of the hearing, and the Executive Director requested that the matter be remanded to the Executive Director so that a Default Order may be entered and the case may be dismissed from the SOAH Docket.
9. The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, Granting Motion to Remand for Issuance of Default Order, issued on February 10, 2011, so that TCEQ may dispose of this case on a default basis.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, 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 Finding of Fact No. 2, Respondent failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to conduct routine coliform monitoring for the months of January 2008 through April 2010, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(ii) and 290.122(c)(2)(A) and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. As evidenced by Finding of Fact No. 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 6, Respondent filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and TEX. HEALTH & SAFETY CODE § 341.049, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53 and 155.101(a)(3) and 30 TEX. ADMIN. CODE § 70.109.
5. As evidenced by Finding of Fact No. 7, Respondent was provided proper notice of the preliminary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.103(a), 155.401(a), and 155.501(c) and (e)(2), and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.425, 70.104, and 80.6(b)(3).
6. As evidenced by Findings of Fact Nos. 8 and 9, Respondent failed to appear for the preliminary hearing, and pursuant to TEX. GOV'T CODE § 2001.056, TEX. WATER CODE § 7.057, 1 TEX. ADMIN. CODE § 155.501(e)(1)(A), and 30 TEX. ADMIN. CODE § 70.106(b), the ALJ dismissed the case from the SOAH docket so that the

Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.

7. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, 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.
8. An administrative penalty in the amount of eighteen thousand four hundred twenty-two dollars (\$18,422.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049.
9. 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 eighteen thousand four hundred twenty-two dollars (\$18,422.00) 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: Gerald S. Smallwood d/b/a Highway 117 Water Supply Corporation; Docket No. 2010-1273-PWS-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.
5. 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.

6. 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.
7. 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.
8. 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 KARI L. GILBRETH**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

"My name is Kari L. Gilbreth. 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 Gerald S. Smallwood d/b/a Highway 117 Water Supply Corporation," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on September 24, 2010.

Respondent filed an answer requesting a hearing on October 14, 2010, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on December 2, 2010. On January 4, 2011, the TCEQ Chief Clerk mailed notice of the February 10, 2011 preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.

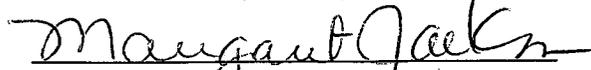
Respondent failed to appear at the hearing on February 10, 2011. At that hearing, I requested and received a finding that Respondent was served with proper notice of the hearing pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(2). I also requested that the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1), which gives an ALJ the authority to remand the case back to the agency "to allow the agency to dispose of the case on a default basis under TEX. GOV'T CODE § 2001.056 and the referring agency's rules."

The ALJ remanded the matter to the Executive Director by SOAH Order No. 1, Granting Motion to Remand for Issuance of Default Order, issued on February 10, 2011, so that TCEQ may dispose of this case on a default basis."

  
Kari L. Gilbreth, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 11<sup>th</sup> day of May, A.D. 2011.

  
Notary Signature

