

Executive Summary – Enforcement Matter – Case No. 41042

City of Rosebud

RN101392322

Docket No. 2011-0136-PWS-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

PWS

Small Business:

No

Location(s) Where Violation(s) Occurred:

City of Rosebud, 0.4 mile north of Farm-to-Market Road 1963 on County Road 347, east of Rosebud, Falls County

Type of Operation:

Public water supply

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: June 3, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$1,667

Amount Deferred for Expedited Settlement: \$333

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$1,334

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

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RN101392322
Docket No. 2011-0136-PWS-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: December 6, 2010

Date(s) of NOE(s): January 7, 2011

Violation Information

1. Failed to collect distribution coliform samples at locations specified in the system's monitoring plan [30 TEX. ADMIN. CODE § 290.109(c)(1)(B)].
2. Failed to complete a customer service inspection certificate prior to providing continuous service to new construction, or any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the Facility [30 TEX. ADMIN. CODE § 290.46(j)].
3. Failed to install backflow prevention assemblies or an air gap at all residences or establishments where an actual or potential contamination hazard exists, as identified in 30 TEX. ADMIN. CODE § 290.47(i) [30 TEX. ADMIN. CODE § 290.44(h)(1)(A)].
4. Failed to provide a water purchase contract that authorizes a maximum daily purchase rate or a uniform purchase rate to meet a minimum production capacity of 0.6 gallons per minute ("gpm") per connection [30 TEX. ADMIN. CODE § 290.45(f)(4)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Within 10 days, begin collecting distribution coliform samples at locations specified in the Facility's monitoring plan;
- b. Within 30 days:
 - i. Submit written certification demonstrating compliance with Ordering Provision a; and
 - ii. Complete a customer service inspection certificate for the FCHC Rosebud Medical Clinic.

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c. Within 60 days:

i. Submit written certification demonstrating compliance with Ordering Provision b.ii; and

ii. Install (reduced-pressure principle) backflow prevention assemblies.

d. Within 90 days, submit written certification demonstrating compliance with Ordering Provision c.ii;

e. Within 180 days, provide a purchase water contract(s) so that purchase water rate plus the production capacity is at least 0.6 gpm; and

f. Within 195 days, submit written certification demonstrating compliance with Ordering Provision e.

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Andrea Linson-Mgbeoduru, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-1482; Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495

TCEQ SEP Coordinator: N/A

Respondent: The Honorable Patsy Fischer, Mayor, City of Rosebud, 402 West Main Street, P.O. Box 657, Rosebud, Texas 76570

Eric L. Kuykendall, City Administrator, City of Rosebud, 402 West Main Street, P.O. Box 657, Rosebud, Texas 76570

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	18-Jan-2011	Screening	20-Jan-2011	EPA Due	
	PCW	20-Jan-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Rosebud
Reg. Ent. Ref. No.	RN101392322
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	41042	No. of Violations	4
Docket No.	2011-0136-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Andrea Linson-Mgbeodu
		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$1,450**

ADJUSTMENTS (+/-) TO SUBTOTAL 1
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **15.0%** Enhancement **Subtotals 2, 3, & 7** **\$217**

Notes: Enhancement for three NOVs with same/similar violations.

Culpability **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$0**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts: \$317
Approx. Cost of Compliance: \$2,343
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$1,667**

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

Reduces or enhances the Final Subtotal by the indicated percentage.
Notes:

Final Penalty Amount **\$1,667**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$1,667**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$333**

Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)
Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **\$1,334**

Screening Date 20-Jan-2011

Docket No. 2011-0136-PWS-E

PCW

Respondent City of Rosebud

Policy Revision 2 (September 2002)

Case ID No. 41042

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101392322

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>)	3	15%
	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) 15%

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

N/A

Adjustment Percentage (Subtotal 3) 0%

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for three NOVs with same/similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 15%

Screening Date 20-Jan-2011

Docket No. 2011-0136-PWS-E

PCW

Respondent City of Rosebud

Policy Revision 2 (September 2002)

Case ID No. 41042

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101392322

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson-Mgbeoduru

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.109(c)(1)(B)

Violation Description Failed to collect distribution coliform samples at locations specified in the system's monitoring plan. Specifically, at the time of the record review, it was documented that the Respondent was using microbiological sampling sites not specified in the approved monitoring plan.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR Release Harm Major Moderate Minor Actual Potential Percent 10%

>> Programmatic Matrix

Falsification Major Moderate Minor Percent 0% Matrix Notes Failure to properly collect distribution coliform samples at locations specified in the monitoring plan could expose customers to a significant amount of contaminants which would not exceed levels protective of human health.

Adjustment \$900

\$100

Violation Events

Number of Violation Events 1 Number of violation days 45

mark only one with an x daily weekly monthly quarterly semiannual annual single event Violation Base Penalty \$100

One quarterly event is recommended, calculated from the record review date, December 6, 2010, to the screening date, January 20, 2011.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDPRP/Settlement Offer Extraordinary Ordinary N/A

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

Violation Subtotal \$100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6 Violation Final Penalty Total \$115

This violation Final Assessed Penalty (adjusted for limits) \$115

Economic Benefit Worksheet

Respondent City of Rosebud
Case ID No. 41042
Reg. Ent. Reference No. RN101392322
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)	\$50	5-Nov-2009	31-Aug-2011	1.82	\$0	\$6	\$6
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the amount necessary to conduct distribution coliform sampling at locations identified in the Facility's approved monitoring plan (2 samples per month x \$25 per sample), calculated from the initial investigation date documenting the violation to the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$50

TOTAL

\$6

Screening Date 20-Jan-2011

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PCW

Respondent City of Rosebud

Policy Revision 2 (September 2002)

Case ID No. 41042

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101392322

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson-Mgbeoduru

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 290.46(j)

Violation Description

Failed to complete a customer service inspection certificate prior to providing continuous service to new construction, or any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the Facility. Specifically, at the time of the record review, it was documented that the Respondent did not conduct a customer service inspection prior to providing services to the recently constructed FCHC Rosebud Medical Clinic.

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

Without the completion of a customer service inspection prior to providing continuous water service to new construction, the Facility's ability to provide safe and reliable water service could be compromised, exposing customers to a significant amount of contaminants that would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1

45 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$250

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$6

Violation Final Penalty Total \$288

This violation Final Assessed Penalty (adjusted for limits) \$288

Economic Benefit Worksheet

Respondent City of Rosebud
Case ID No. 41042
Reg. Ent. Reference No. RN101392322
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)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$71	5-Nov-2009	31-Aug-2011	1.82	\$6	n/a	\$6
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the estimated amount to conduct a customer service inspection and complete the certificate for the FCHC Rosebud Medical Clinic, calculated from the date of the initial investigation documenting the violation to the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$71

TOTAL

\$6

Screening Date 20-Jan-2011

Docket No. 2011-0136-PWS-E

PCW

Respondent City of Rosebud

Policy Revision 2 (September 2002)

Case ID No. 41042

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101392322

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson-Mgbeoduru

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 290.44(h)(1)(A)

Violation Description

Failed to install backflow prevention assemblies or an air gap at all residences or establishments where an actual or potential contamination hazard exists, as identified in 30 Tex. Admin Code § 290.47(i). Specifically, at the time of the record review, it was documented that the required reduced-pressure principle backflow prevention assemblies are not installed at the FCHC Rosebud Medical Clinic and Cook Gerngross Green Patterson Funeral Home.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
Failure to provide the required backflow prevention assemblies may allow backflow and siphonage to occur; thereby, exposing customers to a significant amount of contaminated material which would exceed levels that are protective of human health.					0%

Adjustment \$750

\$250

Violation Events

Number of Violation Events 4 45 Number of violation days

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

Violation Base Penalty \$1,000

Four monthly events are recommended, (two monthly events for each site) calculated from the record review date, December 6, 2010, to the screening date January 20, 2011.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$96 Violation Final Penalty Total \$1,150

This violation Final Assessed Penalty (adjusted for limits) \$1,150

Economic Benefit Worksheet

Respondent City of Rosebud
Case ID No. 41042
Reg. Ent. Reference No. RN101392322
Media Public Water Supply
Violation No. 3

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	\$722	5-Nov-2009	30-Sep-2011	1.90	\$5	\$92	\$96
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs include the estimated amount to have the required reduced-pressure principle backflow prevention assemblies installed at the identified sites, calculated from the initial investigation date documenting the violation to the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$722

TOTAL \$96

Screening Date 20-Jan-2011

Docket No. 2011-0136-PWS-E

PCW

Respondent City of Rosebud

Policy Revision 2 (September 2002)

Case ID No. 41042

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101392322

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson-Mgbeoduru

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 290.45(f)(4)

Violation Description

Failed to provide a water purchase contract that authorizes a maximum daily purchase rate or a uniform purchase rate to meet a minimum production capacity of 0.6 gallons per minute ("gpm") per connection. Specifically, at the time of the record review, it was documented that the Respondent is required to provide a production capacity of 403.2 gpm. Based on a review of the Facility's purchase water contracts, the Facility is providing a production capacity of 310 gpm which is a 23% deficiency.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to provide an adequate production capacity may cause the Facility to experience low pressure or backflow problems exposing customers to a significant amount of contaminants that would not exceed levels protective of human health.

Adjustment \$900

\$100

Violation Events

Number of Violation Events 1

45 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$100

One quarterly event is recommended, calculated from the record review date, December 6, 2010, to the screening date, January 20, 2011.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$209

Violation Final Penalty Total \$115

This violation Final Assessed Penalty (adjusted for limits) \$115

Economic Benefit Worksheet

Respondent City of Rosebud
Case ID No. 41042
Reg. Ent. Reference No. RN101392322
Media Public Water Supply
Violation No. 4

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)	\$1,500	5-Nov-2009	31-Oct-2011	1.99	\$10	\$199	\$209
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 amend the water purchase contracts to meet a production capacity of 0.6 gpm per connection, calculated from the initial investigation date documenting the violation to the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,500

TOTAL

\$209

Compliance History

Customer/Respondent/Owner-Operator: CN600241574 City of Rosebud Classification: AVERAGE Rating: 2.68
Regulated Entity: RN101392322 CITY OF ROSEBUD Classification: Site Rating:
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0730003
WATER LICENSING LICENSE 0730003
Location: 0.4 MILE NORTH OF FARM-TO-MARKET ROAD 1963 ON COUNTY ROAD 347 EAST OF ROSEBUD, FALLS COUNTY, TEXAS
TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: January 20, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 18, 2006 to January 18, 2011
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.
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 01/20/2006 (434120)
- 2 03/12/2009 (736156)
- 3 11/23/2009 (781557)
- 4 03/25/2010 (789470)
- 5 06/16/2010 (801182)
- 6 11/02/2010 (871548)
- 7 01/11/2011 (880618)

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

Date: 01/20/2006 (434120) CN600241574

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(2)
Description: Failure to provide water system records that needed to be reviewed at the time of the investigation.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.45(f)(4)
Description: Failure to meet this Agency's "Minimum Water System Capacity Requirements" for purchased water capacity.

Date: 03/13/2009 (736156) CN600241574

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.44(h)(1)(A)
Description: Failure to provide a backflow prevention assembly where one is required to protect against a high health hazard.

Date: 11/30/2009 (781557) CN600241574

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)
Description: Failure to provide an adequate monitoring plan at the time of the investigation.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(1)(B)
Description: Failure to collect microbiological samples according to the monitoring plan.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(2)
Description: Failure to provide annual tank inspection forms during the investigation.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(j)
Description: Failure to perform customer service inspections.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.44(h)(1)(A)
Description: Failure to install backflow prevention assemblies at the recently constructed FCHC Rosebud Medical Clinic and Cook Gerngross Green Patterson Funeral Home.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(l)
Description: Failure to provide a complete plant operations manual at the time of the investigation.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(4)(C)
Description: Failure to provide a screen on the upper level vent in the disinfection room at the main plant of the City of Rosebud public water supply.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(3)(G)
Description: Failure to obtain an exception to use liquid ammonia sulfate as an alternative disinfectant for a purchase-water system; and for purchasing chloraminated water from Central Texas WSC.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.45(f)(4)
Description: Failure to ensure adequate production capacity as specified in the purchase contract with the Central Texas WSC so that there is at least 0.6 gpm per connection.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF ROSEBUD
RN101392322**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2011-0136-PWS-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Rosebud ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a public water supply located 0.4 mile north of Farm-To-Market Road 1963 on County Road 347 east of Rosebud, Falls County, Texas (the "Facility") that has approximately 672 service connections and serves at least 25 people per day for at least 60 days per year.
2. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
3. The Respondent received notice of the violations alleged in Section II ("Allegations") on January 13, 2011.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of One Thousand Six Hundred Sixty-Seven Dollars (\$1,667) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Three Hundred Thirty-Four Dollars (\$1,334) of the administrative penalty and Three Hundred Thirty-

Three Dollars (\$333) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
7. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
9. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
10. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to collect distribution coliform samples at locations specified in the system's monitoring plan, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(1)(B), as documented during a record review conducted on December 6, 2010.
2. Failed to complete a customer service inspection certificate prior to providing continuous service to new construction, or any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist, or after any material improvement, correction, or addition to the Facility, in violation of 30 TEX. ADMIN. CODE § 290.46(j), as documented during a record review conducted on December 6, 2010.
3. Failed to install backflow prevention assemblies or an air gap at all residences or establishments where an actual or potential contamination hazard exists, as identified in 30 TEX. ADMIN. CODE § 290.47(i), in violation of 30 TEX. ADMIN. CODE § 290.44(h)(1)(A), as documented during a record review conducted on December 6, 2010.
4. Failed to provide a water purchase contract that authorizes a maximum daily purchase rate or a uniform purchase rate to meet a minimum production capacity of 0.6 gallons

per minute ("gpm") per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(f)(4), as documented during a record review conducted on December 6, 2010.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Rosebud, Docket No. 2011-0136-PWS-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 10 days after the effective date of this Agreed Order, begin collecting distribution coliform samples at locations specified in the Facility's monitoring plan, in accordance with 30 TEX. ADMIN. CODE § 290.109.
 - b. Within 30 days after the effective date of this Agreed Order:
 - i. Submit written certification as described in Ordering Provision No. 2.f below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a; and
 - ii. Complete a customer service inspection certificate for the FCHC Rosebud Medical Clinic, in accordance with 30 TEX. ADMIN. CODE § 290.46.
 - c. Within 60 days after the effective date of this Agreed Order:
 - i. Submit written certification as described in Ordering Provision No. 2.f below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.b.ii; and

- ii. Install (reduced-pressure principle) backflow prevention assemblies, as identified in 30 TEX. ADMIN CODE § 290.47(i), at the FCHC Rosebud Medical Clinic and Cook Gerngross Green Patterson Funeral Home, as required by 30 TEX. ADMIN. CODE § 290.44.
- d. Within 90 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.f below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.c.ii.
- e. Within 180 days after the effective date of the Agreed Order, provide a purchase water contract(s) so that purchase water rate plus the production capacity is at least 0.6 gpm, in accordance with 30 TEX. ADMIN. CODE § 290.45.
- f. 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.e. 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
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a

written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in 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.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

Date 6/10/2011

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions;
- and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

Date 4-27-2011

Eric L. Kuykendall
Name (Printed or typed)
Authorized Representative of
City of Rosebud

City Administrator
Title

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