

Executive Summary – Enforcement Matter – Case No. 39920
RICHARD J. DUDA
RN105362529
Docket No. 2010-1023-PWS-E

Order Type:
Default Order

Findings Order Justification:
N/A

Media:
PWS

Small Business:
Yes

Location Where Violation Occurred:
Intersection of Farm-to-Market Road 986 and Four Post Lane, Kaufman County

Type of Operation:
public water system

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	\$12.45
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: May 13, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$3,542

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: \$3,542

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

RICHARD J. DUDA

RN105362529

Docket No. 2010-1023-PWS-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: May 15, 2010; June 22, 2010
Date(s) of NOV(s): See Compliance History – 8 NOVs
Date(s) of NOE(s): June 3, 2010

Violation Information

1. Failed to comply with the MCL for total coliform and failed to provide public notice of the exceedance [TEX. HEALTH & SAFETY CODE § 341.031(a) and 30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(A)].
2. Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform positive result for a routine distribution coliform sample and failed to provide public notice of the failure to collect repeat distribution samples within 24 hours of being notified of a total coliform-positive sample [30 TEX. ADMIN. CODE §§ 290.109(cc)(2)(F) and 290.122(cc)(2)(A)].
3. Failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to sample [TEX. HEALTH & SAFETY CODE § 341.033(d) and 30 TEX. ADMIN. CODE §§ 290.109(cc)(2)(A)(ii) and 290.122(cc)(2)(A)].
4. Failed to pay public health service fees, including late fees, for Financial Administration Account No. 91290050 for Fiscal Year 2010 [TEX. WATER CODE § 5.702 and 30 TEX. ADMIN. CODE § 290.51(a)(3)].

Corrective Actions/Technical Requirements**Corrective Action Completed:**

N/A

Technical Requirements:

1. Within 10 days:
 - a. Begin complying with all applicable monitoring requirements by collecting all required samples and providing water that meets the provisions regarding microbial contaminants, in accordance with 30 Tex. Admin. Code § 290.109. This provision will be satisfied upon six consecutive months of compliant monitoring and reporting;
 - b. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the facility; and
 - c. Submit payment for all outstanding fees, interest, and penalties.
2. Within 195 days, submit written certification documenting compliance.

Litigation Information

Date Petition Filed: February 28, 2011
Date Green Card Signed: Unclaimed
Date Answer Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A

RICHARD J. DUDA

RN105362529

Docket No. 2010-1023-PWS-E

Contact Information

TCEQ Attorneys: Rudy Calderon, Litigation Division, (512) 239-3400

Lena Roberts, Litigation Division, (512) 239-3400

TCEQ Enforcement Coordinator: Stephen Thompson, Water Enforcement Section, (512) 239-2558

TCEQ Regional Contact: Sid Slocum, Dallas/Fort Worth Regional Office, (817) 588-5901

Respondent: Richard J. Duda, 19367 Farm-to-Market Road 986, Terrell, Texas 75160

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	14-Jun-2010	Screening	22-Jun-2010	EPA Due	31-Aug-2010
	PCW	28-Feb-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	Richard J. Duda
Reg. Ent. Ref. No.	RN105362529
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39920	No. of Violations	5
Docket No.	2010-1023-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Stephen Thompson
		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	\$2,000
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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.

Compliance History	40.0% Enhancement	Subtotals 2, 3, & 7	\$800
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Notes: Enhancement is due to eight Notices of Violation that contain violations that are the same as those contained in the current enforcement action.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$746
Approx. Cost of Compliance	\$800

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,800
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OTHER FACTORS AS JUSTICE MAY REQUIRE	26.5%	Adjustment	\$742
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement recommended to recover avoided costs of compliance.

Final Penalty Amount	\$3,542
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,542
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$3,542
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Screening Date 22-Jun-2010

Docket No. 2010-1023-PWS-E

PCW

Respondent Richard J. Duda

Policy Revision 2 (September 2002)

Case ID No. 39920

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105362529

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	8	40%
	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%

Please Enter Yes or No

Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 40%

>> 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 is due to eight Notices of Violation that contain violations that are the same as those contained in the current enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 40%

Screening Date 22-Jun-2010

Docket No. 2010-1023-PWS-E

PCW

Respondent Richard J. Duda

Policy Revision 2 (September 2002)

Case ID No. 39920

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105362529

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(f)(3) and 290.122(b)(2)(A) and Tex. Health & Safety Code § 341.031(a)

Violation Description Failed to comply with the Maximum Contaminant Level ("MCL") for total coliform for July 2009 and failed to provide public notice of the exceedence for the month of July 2009.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

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

>>Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes The presence of coliform bacteria is an indication that the water supply is contaminated with significant amounts of total coliform that do not exceed levels that are protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1 31 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$250

One monthly 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 \$131

Violation Final Penalty Total \$443

This violation Final Assessed Penalty (adjusted for limits) \$443

Economic Benefit Worksheet

Respondent Richard J. Duda
Case ID No. 39920
Req. Ent. Reference No. RN105362529
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	1-Jul-2009	31-Jul-2009	1.00	\$5	\$100	\$105
Other (as needed)	\$25	23-Jul-2009	23-Aug-2009	1.00	\$1	\$25	\$26

Notes for AVOIDED costs

The avoided costs include additional oversight to properly treat the water to prevent the total coliform exceedance (\$100) and the amount to provide public notice (\$25) of the exceedance, calculated for the month in which the coliform MCL was exceeded and during the period that a public notice was required.

Approx. Cost of Compliance

\$125

TOTAL

\$131

Screening Date 22-Jun-2010

Docket No. 2010-1023-PWS-E

PCW

Respondent Richard J. Duda

Policy Revision 2 (September 2002)

Case ID No. 39920

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105362529

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(3)(A)(ii) and 290.122(c)(2)(A)

Violation Description Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample collected during the month of October 2009 and failed to provide public notice of the failure to collect repeat distribution samples within 24 hours of being notified of a total coliform-positive sample for the month of October 2009.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (25%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0%).

Matrix Notes Failure to properly sample may expose the public to a significant amount of undetected contaminants that exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1 Number of violation days 31

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

Violation Base Penalty \$250

One monthly event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked 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 \$131

Violation Final Penalty Total \$443

This violation Final Assessed Penalty (adjusted for limits) \$443

Economic Benefit Worksheet

Respondent Richard J. Duda
Case ID No. 39920
Req. Ent. Reference No. RN105362529
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
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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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$100	1-Oct-2009	31-Oct-2009	1.00	\$5	\$100	\$105
Other (as needed)	\$25	31-Oct-2009	31-Jan-2010	1.17	\$1	\$25	\$26

Notes for AVOIDED costs

The avoided costs include the estimated amount to collect a total of four repeat samples (\$25 per sample) and provide public notice for the failure to collect the samples (\$25 per notice), calculated for the month in which no samples were collected and during the period that a public notice was required.

Approx. Cost of Compliance

\$125

TOTAL

\$131

Screening Date 22-Jun-2010

Docket No. 2010-1023-PWS-E

PCW

Respondent Richard J. Duda

Policy Revision 2 (September 2002)

Case ID No. 39920

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105362529

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(F) and 290.122(c)(2)(A)

Violation Description Failed to collect at least five routine distribution coliform samples during the months following a total coliform-positive sample result in September and November 2009 and failed to provide public notice of the failure to sample for the months of September and November 2009.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual/Potential), Harm (Major/Moderate/Minor), and Percent (25%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0%).

Matrix Notes Failure to properly sample may expose the public to a significant amount of undetected contaminants that exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 2 Number of violation days 60

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

Violation Base Penalty \$500

Two monthly events are recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

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

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

Violation Subtotal \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$291

Violation Final Penalty Total \$886

This violation Final Assessed Penalty (adjusted for limits) \$886

Economic Benefit Worksheet

Respondent Richard J. Duda
Case ID No. 39920
Req. Ent. Reference No. RN105362529
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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

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]	\$225	1-Sep-2009	30-Nov-2009	1.16	\$13	\$225	\$238
Other (as needed)	\$50	30-Sep-2009	28-Feb-2010	1.33	\$3	\$50	\$53

Notes for AVOIDED costs

The avoided costs include the estimated amount to collect a total of nine routine samples (\$25 per sample) and provide public notice for the failure to collect the samples (\$25 per notice), calculated for the months in which no samples were collected and during the period that a public notice was required.

Approx. Cost of Compliance

\$275

TOTAL

\$291

Screening Date 22-Jun-2010

Docket No. 2010-1023-PWS-E

PCW

Respondent Richard J. Duda

Policy Revision 2 (September 2002)

Case ID No. 39920

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105362529

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

Violation Number 4

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 for the months of December 2009 through March 2010 and failed to provide public notification of the failure to sample for the months of December 2009 through February 2010.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes Failure to properly sample may expose the public to a significant amount of undetected contaminants that exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 4 121 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

Four 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 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 \$192

Violation Final Penalty Total \$1,771

This violation Final Assessed Penalty (adjusted for limits) \$1,771

Economic Benefit Worksheet

Respondent Richard J. Duda
Case ID No. 39920
Req. Ent. Reference No. RN105362529
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)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$100	15-May-2010	1-Jan-2011	0.63	\$3	n/a	\$3
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 develop a protocol to ensure all necessary public notifications are provided in a timely manner. The date required is the date of the record review. 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]	\$100	31-Dec-2009	31-Mar-2010	1.16	\$6	\$100	\$106
Other (as needed)	\$75	1-Apr-2009	31-May-2010	2.08	\$8	\$75	\$83

Notes for AVOIDED costs

The avoided costs include the estimated amount to collect a total of four routine samples (\$25 per sample) and provide public notice for the failure to collect the samples (\$5 per notice), calculated for the months in which no samples were collected and during the period that a public notice was required.

Approx. Cost of Compliance

\$275

TOTAL

\$192

Screening Date 22-Jun-2010

Docket No. 2010-1023-PWS-E

PCW

Respondent Richard J. Duda

Policy Revision 2 (September 2002)

Case ID No. 39920

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105362529

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 290.51(a)(3) and Tex. Water Code § 5.702

Violation Description Failed to pay public health service fees, including late fees, for TCEQ Financial Administration Account No. 91290050 for Fiscal Year 2010.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0%).

Matrix Notes

Adjustment \$1,000

\$0

Violation Events

Number of Violation Events [] Number of violation days []

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

Violation Base Penalty \$0

All penalties and interest will be determined by the Financial Administration Division at the next billing cycle.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table with columns: Extraordinary, Ordinary, N/A and sub-columns: Before NOV, NOV to EDPRP/Settlement Offer.

Notes

Violation Subtotal \$0

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$0

This violation Final Assessed Penalty (adjusted for limits) \$0

Economic Benefit Worksheet

Respondent Richard J. Duda
Case ID No. 39920
Req. Ent. Reference No. RN105362529
Media Public Water Supply
Violation No. 5

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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

There is no economic benefit associated with this violation.

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

\$0

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator: CN603675992 RICHARD J. DUDA Classification: Rating:
Regulated Entity: RN105362529 FOUR POST COMMUNITY WATER Classification: Site Rating:
SYSTEM
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1290050
Location: INTX OF FM 986 AND FOUR POST LN, KAUFMAN COUNTY, TX
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: June 22, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 22, 2005 to June 22, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
Name: Stephen Thompson Phone: (512) 239-2558

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

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, 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	10/30/2007	(598089)
2	05/25/2010	(801647)
3	05/25/2010	(824420)
4	05/27/2010	(824672)
5	05/27/2010	(824678)
6	05/27/2010	(824683)
7	05/27/2010	(824684)
8	05/27/2010	(824687)
9	05/27/2010	(824708)
10	05/27/2010	(824713)
11	06/11/2010	(825614)

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

Date: 07/23/2009 (824420)

CN603675992

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)

Description: TCR MCL Violation 07/2009 - System exceeded a Maximum Contaminant Level (MCL) Violation.

Self Report? NO

Classification: Moderate

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

Description: TCR PN MCL Violation 07/2009 - Failure to post a public notice for exceeding a Maximum Contaminant Level (MCL) Violation.

Date: 11/05/2009 (824678)

CN603675992

Self Report? NO

Classification: Moderate

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

Description: TCR Increase Monitoring Violation 09/2009 - Failure to collect any 5 distribution samples following a coliform found month.

Self Report? NO

Classification: Moderate

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

Description: TCR PN Increase Monitoring Violation 09/2009 - Failure to post public notice for not collecting any of the 5 distribution samples following a coliform found month.

Date: 12/08/2009 (824672) CN603675992
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)
 Description: TCR Repeat Monitoring Violation 10/2009 - Failure to collect any repeats following a coliform found result.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
 Description: TCR PN Repeat Monitoring Violation 10/2009 - Failure to post a public notice for not collecting any repeats following a coliform found result.

Date: 01/13/2010 (824683) CN603675992
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)
 Description: TCR Increase Monitoring Violation 11/2009 - Failure to collect all 5 distribution samples following a coliform found month.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
 Description: TCR PN Increase Monitoring Violation 11/2009 - Failure to post public notice for not collecting all 5 distribution samples following a coliform found month.

Date: 01/26/2010 (824684) CN603675992
 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 (824687) CN603675992
 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 (824708) CN603675992
 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).

Date: 05/03/2010 (824713) CN603675992
 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).

- 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
RICHARD J. DUDA;
RN105362529**

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§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-1023-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. WATER CODE ch. 5, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Richard J. Duda ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns a public water system located at the intersection of Farm-to-Market Road 986 and Four Post Lane in Kaufman County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 22 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 May 15, 2010, a TCEQ Public Drinking Water Program investigator documented that Respondent:
 - a. Failed to comply with the Maximum Containment Level ("MCL") for total coliform for July 2009 and failed to provide public notice of the exceedence for July 2009;
 - b. Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample collected in October 2009 and failed to provide public notice of the failure to collect repeat distribution samples within 24 hours of being notified of a total coliform-positive sample in October 2009;
 - c. Failed to collect at least five routine distribution coliform samples during the months following a total coliform-positive sample result in September and November 2009 and failed to provide public notice of the failure to sample in September and November 2009; and
 - d. Failed to collect routine distribution water samples for coliform analysis for the months of December 2009 through March 2010 and failed to provide public notification of the failure to sample for the months of December 2009 through February 2010.

3. During a record review conducted on June 22, 2010 a TCEQ Central Office investigator documented that Respondent failed to pay public health service fees, including late fees, for TCEQ Financial Administration Account No. 91290050 for Fiscal Year 2010.
4. Respondent received notice of the violations alleged in Findings of Fact Nos. 2.a. through 2.d. on or about June 8, 2010. Respondent received notice of the violation alleged in Finding of Fact No. 3 on or about July 27, 2010.
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 and Requiring Certain Actions of Richard J. Duda" (the "EDPRP") in the TCEQ Chief Clerk's office on February 28, 2011.
6. By letter dated February 28, 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. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
7. 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 Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 5, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to comply with the MCL for total coliform and failed to provide public notice of the exceedence, in violation of TEX. HEALTH & SAFETY CODE § 341.031(a) and 30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(A).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result for a routine distribution coliform sample and failed to provide public notice of the failure to collect repeat distribution samples within 24 hours of being notified of a total coliform-positive sample, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(ii) and 290.122(c)(2)(A).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to collect at least five routine distribution coliform samples during the months following a total coliform-positive sample and failed to provide public notice of the failure to sample, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(A).

5. As evidenced by Finding of Fact No. 2.d., Respondent failed to collect routine distribution water samples for coliform analysis and failed to provide public notification of the failure to sample, in violation of TEX. HEALTH & SAFETY CODE § 341.033(d) and 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(ii) and 290.122(c)(2)(A).
6. As evidenced by Finding of Fact No. 3, Respondent failed to pay public health service fees, including late fees, for TCEQ Financial Administration Account No. 91290050 for Fiscal Year 2010, in violation of 30 TEX. ADMIN. CODE § 290.51(a)(3) and TEX. WATER CODE § 5.702.
7. As evidenced by Findings of Fact Nos. 5 and 6, 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(c)(2).
8. As evidenced by Finding of Fact No. 7, Respondent failed to file a timely answer as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 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.
9. 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.
10. An administrative penalty in the amount of three thousand five hundred forty-two dollars (\$3,542.00) 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.
11. 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 three thousand five hundred forty-two dollars (\$3,542.00) 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: Richard J. Duda; Docket No. 2010-1023-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. Respondent shall undertake the following technical requirements:
- a. Within 10 days after the effective date of this Order, Respondent shall:
 - i. Begin complying with all applicable monitoring requirements by collecting all required samples and providing water that meets the provisions regarding microbial contaminants, in accordance with 30 Tex. Admin. Code § 290.109. This provision will be satisfied upon six consecutive months of compliant monitoring and reporting;
 - ii. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the Facility, in accordance with 30 TEX. ADMIN. CODE § 290.122; and
 - iii. Submit payment for all outstanding fees, interest, and penalties for TCEQ Financial Administration Account No. 91290050. The payment shall be sent with the notation "Richard J. Duda, Financial Administration Account No. 91290050" 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

- b. Within 195 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and shall 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 fine and imprisonment for knowing violations."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team
Texas Commission on Environmental Quality
Enforcement Division, MC 149A
P.O. Box 13087
Austin, Texas 78711-3087

and:

Elston Johnson, Public Drinking Water Section Manager
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. All relief not expressly granted in this Order is denied.
5. 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.
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

For the Commission

AFFIDAVIT OF RUDY CALDERON

STATE OF TEXAS

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COUNTY OF TRAVIS

"My name is Rudy Calderon. 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 and Requiring Certain Actions of Richard J. Duda," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on February 28, 2011.

The EDPRP was mailed to Respondent's last known address on February 28, 2011 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

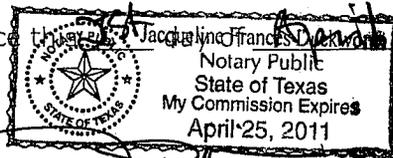
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."



Rudy Calderon, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rudy Calderon, 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 28th day of ~~March~~ ^{April}, A.D. 2011.



Notary Signature