

Executive Summary – Enforcement Matter – Case No. 40090
Dana L. Miller d/b/a Hawkins System
RN103915120
Docket No. 2010-1211-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Three or more NOVs over the prior five year period for the same violations

Media:

PWS

Small Business:

Yes

Location Where Violation Occurred:

4575 Miller Road, Krum, Denton County

Type of Operation:

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: \$4,256

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$126

Total Due to General Revenue: \$4,130

Payment Plan: 35 payments of \$118 each

Compliance History Classifications:

Person/CN – N/A

Site/RN – N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Dana L. Miller d/b/a Hawkins System

RN103915120

Docket No. 2010-1211-PWS-E

Investigation Information

Complaint Date: N/A

Date(s) of Investigation: June 15, 2010

Date(s) of NOV(s): April 7, 2009; May 6, 2009; October 2, 2009; October 23, 2009; January 13, 2010; January 26, 2010; March 16, 2010; March 29, 2010; May 3, 2010; and June 10, 2010

Date(s) of NOE(s): June 30, 2010

Violation Information

1. Failed to collect routine distribution water samples for coliform analysis for the months of January 2009, February 2009, August 2009, and December 2009 through April 2010, and failing to provide a notification of the failure to sample for the months of January 2009, February 2009, August 2009, and December 2009 through March 2010 [TEX. HEALTH & SAFETY CODE § 341.033(d) and 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(ii) and 290.122(c)(2)(A)].
2. Failed to collect at least five routine distribution coliform samples during the month following a total coliform positive result in November 2009 and failed to provide public notification of the failure to sample for the month of November 2009 [30 TEX. ADMIN CODE §§ 290.109(c)(2)(f) and 290.122(c)(2)(a)].
3. Failed to comply with the Maximum Contaminant Level (MCL) for total coliform for the month of October 2009 and failed to provide notice of the exceedence for the month of October 2009 [TEX. HEALTH & SAFETY CODE § 341.031(a) and 30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(A)].

Corrective Actions/Technical Requirements

Corrective Actions Completed:

N/A

Technical Requirements:

1. Within 10 days, begin complying with applicable coliform monitoring requirements by collecting routing coliform distribution samples and providing water that meets the provisions regarding microbial contaminants;
2. Within 30 days, implement procedures to ensure that all necessary public notifications are provided in a timely manner to the customers of the Facility; and
3. Within 180 days, submit written certification demonstrating compliance.

Litigation Information

Date Petition(s) Filed: December 15, 2010

Date Answer(s) Filed: December 29, 2010

SOAH Referral Date: January 31, 2011

Hearing Date(s):

Preliminary hearing: April 15, 2011

Evidentiary hearing: September 29, 2011

Settlement Date: May 2, 2011

Executive Summary – Enforcement Matter – Case No. 40090
Dana L. Miller d/b/a Hawkins System
RN103915120
Docket No. 2010-1211-PWS-E

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Contact Information

TCEQ Attorneys: Sharesa Y. Alexander, 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: Dana L. Miller, 1205 Meadow Ridge Drive, Denton, Denton 76201

Respondent's Attorney: Mark Zeppa, 4833 Spicewood Springs Rd., Ste. 202, Austin, Texas 78759

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	12-Jul-2010	Screening	27-Jul-2010	EPA Due	31-Aug-2010
	PCW	24-Aug-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Dana L. Miller dba Hawkins System
Reg. Ent. Ref. No.	RN103915120
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	40090	No. of Violations	3
Docket No.	2010-1211-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	\$2,500
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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	50.0% Enhancement Subtotals 2, 3, & 7	\$1,250

Notes: Enhancement for ten 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
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
Total EB Amounts	\$511	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$575		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,750
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OTHER FACTORS AS JUSTICE MAY REQUIRE	13.5%	Adjustment	\$506
Notes	Enhancement for the recovery of avoided costs of compliance.		
		Final Penalty Amount	\$4,256

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,256
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DEFERRAL	0.0%	Reduction Adjustment	\$0
Notes	No deferral is recommended for Findings Orders.		

PAYABLE PENALTY	\$4,256
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Screening Date 27-Jul-2010

Docket No. 2010-1211-PWS-E

PCW

Respondent Dana L. Miller dba Hawkins System

Policy Revision 2 (September 2002)

Case ID No. 40090

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103915120

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 notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	10	50%
	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) 50%

>> 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 ten 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) 50%

Screening Date 27-Jul-2010 **Docket No.** 2010-1211-PWS-E **PCW**
Respondent Dana L. Miller dba Hawkins System *Policy Revision 2 (September 2002)*
Case ID No. 40090 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN103915120
Media [Statute] Public Water Supply
Enf. Coordinator Stephen Thompson

Violation Number

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

Base Penalty

>> **Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

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

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Eight monthly events are recommended.

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Dana L. Miller dba Hawkins System
Case ID No. 40090
Req. Ent. Reference No. RN103915120
Media Violation No. Public Water Supply
 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)	\$100	15-Jun-2010	1-Feb-2011	0.63	\$0	\$4	\$4
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 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]	\$200	31-Jan-2009	30-Apr-2010	2.16	\$22	\$200	\$222
Other (as needed)	\$40	30-Apr-2009	30-Jun-2010	2.08	\$4	\$40	\$44

Notes for AVOIDED costs The avoided costs include the estimated amount to collect a total of eight 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 \$340

TOTAL \$270

Screening Date 27-Jul-2010

Docket No. 2010-1211-PWS-E

PCW

Respondent Dana L. Miller dba Hawkins System

Policy Revision 2 (September 2002)

Case ID No. 40090

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103915120

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

Violation Number 2

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 month following a total coliform-positive sample result in November 2009 and failed to provide public notification of the failure to sample for the month of November 2009.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

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

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1

30 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

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 \$130

Violation Final Penalty Total \$426

This violation Final Assessed Penalty (adjusted for limits) \$426

Economic Benefit Worksheet

Respondent Dana L. Miller dba Hawkins System
Case ID No. 40090
Req. Ent. Reference No. RN103915120
Media Violation No. Public Water Supply
 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				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]	\$125	1-Nov-2009	30-Nov-2009	0.00	\$0	\$125	\$125
Other (as needed)	\$5	1-Dec-2009	28-Feb-2010	1.16	\$0	\$5	\$5

Notes for AVOIDED costs

The avoided costs include the estimated amount to collect a total of five routine samples (\$25 per sample) and provide public notice for the failure to collect the samples (\$5 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 \$130

TOTAL \$130

Screening Date 27-Jul-2010

Docket No. 2010-1211-PWS-E

PCW

Respondent Dana L. Miller dba Hawkins System

Policy Revision 2 (September 2002)

Case ID No. 40090

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103915120

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

Violation Number 3

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 the month of October 2009 and failed to provide public notice of the exceedence for the month of October 2009.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

>> 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 not 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 \$110

Violation Final Penalty Total \$426

This violation Final Assessed Penalty (adjusted for limits) \$426

Economic Benefit Worksheet

Respondent Dana L. Miller dba Hawkins System
Case ID No. 40090
Req. Ent. Reference No. RN103915120
Media Violation No. Public Water Supply
 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]	\$100	1-Oct-2009	31-Oct-2009	1.00	\$5	\$100	\$105
Other (as needed)	\$5	23-Oct-2009	23-Nov-2009	1.00	\$0	\$5	\$5

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 (\$5) 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 \$105

TOTAL \$110

Compliance History Report

Customer/Respondent/Owner-Operator: CN603611138 MILLER, DANA L Classification: Rating:
Regulated Entity: RN103915120 HAWKINS SYSTEM Classification: Site Rating:
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0610122
Location: 4575 MILLER ROAD, DENTON COUNTY, TX
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: July 27, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 27, 2005 to July 27, 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? 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 | 11/21/2008 | (707262) |
| 2 | 06/23/2010 | (828350) |
| 3 | 06/30/2010 | (828711) |
| 4 | 06/30/2010 | (828731) |
| 5 | 06/30/2010 | (828735) |
| 6 | 06/30/2010 | (828743) |
| 7 | 06/30/2010 | (828749) |
| 8 | 06/30/2010 | (828750) |
| 9 | 06/30/2010 | (828751) |
| 10 | 06/30/2010 | (828752) |
| 11 | 06/30/2010 | (828753) |
| 12 | 07/07/2010 | (829369) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|--|----------|--------------------------|
| Date: | 04/07/2009 | (828350) | CN603611138 |
| 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 (828711) CN603611138
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: 10/02/2009 (828731) CN603611138
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: 10/23/2009 (828735) CN603611138
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)
Description: TCR MCL Violation 10/2009 - 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 10/2009 - Failure to post a public notice for exceeding a Maximum Contaminant Level (MCL) Violation.

Date: 01/13/2010 (828743) CN603611138
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 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 (828749) CN603611138
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 (828750) CN603611138
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 (828751) CN603611138
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 (828752) CN603611138
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).

Date: 06/10/2010 (828753) CN603611138
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).

- F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
DANA L. MILLER D/B/A HAWKINS
SYSTEM;
RN103915120**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2010-1211-PWS-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Dana L. Miller d/b/a Hawkins System ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Mark H. Zeppa, presented this Agreed Order to the Commission.

Respondent understands that she has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Respondent.

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

FINDINGS OF FACT

1. Respondent operates a public water system located at 4575 Miller Road in Krum, Denton County, Texas (the "Facility"). The Facility provides water for human consumption, has 15 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 15, 2010, a TCEQ Central Office investigator documented that Respondent:
 - a. Failed to collect routine distribution water samples for coliform analysis for the months of January 2009, February 2009, August 2009, and December 2009 through April 2010, and failed to provide public notification of the failure

to sample for the months of January 2009, February 2009, August 2009 and December 2009 through March 2010;

- b. Failed to collect at least five routine distribution coliform samples during the month following a total coliform-positive result in November 2009 and failed to provide public notification of the failure to sample for the month of November 2009; and
 - c. Failed to comply with the Maximum Contaminant Level ("MCL") for total coliform for the month of October 2009 and failed to provide notice of the exceedence for the month of October 2009.
3. Respondent received notice of the violations on or about July 5, 2010.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to the 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 collect routine distribution water samples for coliform analysis for the months of January 2009, February 2009, August 2009, and December 2009 through April 2010, and failed to provide public notification of the failure to sample for the months of January 2009, February 2009, August 2009, and December 2009 through March 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. 2.b., Respondent failed to collect at least five routine distribution coliform samples during the month following a total coliform-positive result in November 2009 and failed to provide public notification of the failure to sample for the month of November 2009, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(A).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to comply with the MCL for total coliform for the month of October 2009 and failed to provide notice of the exceedence for the month of October 2009, in violation of 30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(A), and TEX. HEALTH & SAFETY CODE § 341.031(a).
5. 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.
6. An administrative penalty in the amount of four thousand two hundred fifty-six dollars (\$4,256.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049. Respondent paid one hundred twenty-six dollars (\$126.00) of the administrative penalty. The remaining amount of four thousand one hundred thirty dollars (\$4,130.00) of the administrative penalty shall be payable in 35 monthly payments of one hundred eighteen dollars (\$118.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent

payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 6, above, 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 Agreed Order resolve only the matters set forth by this Agreed Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Dana L. Miller d/b/a Hawkins System, Docket No. 2010-1211-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

2. Respondent shall undertake the following technical requirements:
 - a. Within 10 days after the effective date of this Agreed Order, Respondent shall begin complying with applicable coliform monitoring requirements by collecting routing coliform distribution samples and providing water that meets the provisions regarding microbial contaminants, in accordance with 30 TEX. ADMIN. CODE § 290.109. The provision will be satisfied upon six consecutive months of compliant monitoring and reporting;
 - b. Within 30 days after the effective date of this Agreed Order, Respondent shall 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
 - c. Within 180 days after the effective date of this Agreed Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. 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:

Mr. 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

3. All relief not expressly granted in this Agreed Order is denied.
4. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. 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 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, 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be

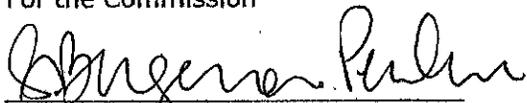
copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

9. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to 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

6/30/2011

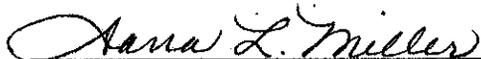
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Dana L. Miller d/b/a Hawkins System, 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.



Signature – Dana L. Miller, Operator
Hawkins System

5-2-11

Date