

**Executive Summary – Enforcement Matter – Case No. 40888**

**Aqua Texas, Inc.**

**RN104393194**

**Docket No. 2010-2047-UTL-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

UTL

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Cypress Creek Ranch, located east of Fry Road and south of Mound Road, Harris 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:** May 13, 2011

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$1,337

**Amount Deferred for Expedited Settlement:** \$267

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$1,070

**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:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 40888**

**Aqua Texas, Inc.**

**RN104393194**

**Docket No. 2010-2047-UTL-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** December 14, 2010

**Date(s) of NOE(s):** December 16, 2010

***Violation Information***

Failed to submit to the Executive Director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the Facility's ability to provide emergency operations [30 TEX. ADMIN. CODE §§ 290.39(o)(1), 291.162(a) and (j) and TEX. WATER CODE § 13.1395(b)(2)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Executive Director recognizes that on January 5, 2011, the Respondent provided the TCEQ with an Emergency Preparedness Plan that demonstrates the Facility's ability to provide emergency operations. The plan was deemed acceptable on February 25, 2011.

**Technical Requirements:**

N/A

***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:** Ms. Katy Schumann, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-2602; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495

**TCEQ SEP Coordinator:** N/A

**Respondent:** Mr. Robert Laughman, President, Aqua Texas, Inc., 1106 Clayton Lane, Suite 400W, Austin, Texas 78723

Mr. Steve Blackhurst, Environmental Compliance Manager, Aqua Texas, Inc., 1106 Clayton Lane, Suite 400W, Austin, Texas 78723

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



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	20-Dec-2010	<b>Screening</b>	21-Dec-2010	<b>EPA Due</b>	
	<b>PCW</b>	21-Dec-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Aqua Texas, Inc.
<b>Reg. Ent. Ref. No.</b>	RN104393194
<b>Facility/Site Region</b>	12-Houston
<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>				
<b>Enf./Case ID No.</b>	40888	<b>No. of Violations</b>	1	
<b>Docket No.</b>	2010-2047-UTL-E	<b>Order Type</b>	1660	
<b>Media Program(s)</b>	Public Water Utilities	<b>Government/Non-Profit</b>	No	
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Katy Schumann	
		<b>EC's Team</b>	Enforcement Team 2	
<b>Admin. Penalty \$</b>	<b>Limit Minimum</b>	\$0	<b>Maximum</b>	\$500

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$1,250**

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

**Compliance History** **7.0%** Enhancement **Subtotals 2, 3, & 7** **\$87**

Notes: Enhancement for one NOV with same/similar violations and one NOV with dissimilar 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: \$16  
Approx. Cost of Compliance: \$328  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$1,337**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$1,337**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$1,337**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$267**

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** **\$1,070**

Screening Date 21-Dec-2010

Docket No. 2010-2047-UTL-E

PCW

Respondent Aqua Texas, Inc.

Policy Revision 2 (September 2002)

Case ID No. 40888

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104393194

Media [Statute] Public Water Utilities

Enf. Coordinator Katy Schumann

### 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> )	1	5%
	Other written NOVs	1	2%
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)** 7%

#### >> 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 one NOV with same/similar violations and one NOV with dissimilar violations.

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

Screening Date 21-Dec-2010

Docket No. 2010-2047-UTL-E

PCW

Respondent Aqua Texas, Inc.

Policy Revision 2 (September 2002)

Case ID No. 40888

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104393194

Media [Statute] Public Water Utilities

Enf. Coordinator Katy Schumann

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.39(o)(1), 291.162(a) and (j) and Tex. Water Code § 13.1395(b)(2)

Violation Description Failed to submit to the Executive Director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the Facility's ability to provide emergency operations.

Base Penalty \$500

>> 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 (25%). Matrix Notes: 100% of the rule requirement was not met.

Adjustment \$375

\$125

Violation Events

Number of Violation Events 10 Number of violation days 295

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

Violation Base Penalty \$1,250

Ten monthly events are recommended, calculated from the due date, March 1, 2010, to the screening date, December 21, 2010.

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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$16

Violation Final Penalty Total \$1,338

This violation Final Assessed Penalty (adjusted for limits) \$1,338

# Economic Benefit Worksheet

**Respondent** Aqua Texas, Inc.  
**Case ID No.** 40888  
**Reg. Ent. Reference No.** RN104393194  
**Media** Public Water Utilities  
**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)	\$328	1-Mar-2010	25-Feb-2011	0.99	\$16	n/a	\$16

Notes for DELAYED costs

The delayed cost includes the estimated amount (\$41/hr labor and administrative cost x 8 hours) to develop and submit an emergency preparedness plan. Date required is the deadline the plan was due. Final date is the date of compliance.

### Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$328

**TOTAL**

\$16

# Compliance History

Customer/Respondent/Owner-Operator: CN601570773 AQUA TEXAS, INC. Classification: AVERAGE Rating: 3.01

Regulated Entity: RN104393194 CYPRESS CREEK RANCH Classification: Site Rating:

ID Number(s): REGISTRATION 1013296  
PUBLIC WATER SYSTEM/SUPPLY

Location: EAST OF FRY ROAD & SOUTH OF MOUND ROAD  
HARRIS COUNTY, TEXAS

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: December 21, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: December 21, 2005 to December 21, 2010

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

Name: Katy Schumann Phone: (512) 239 - 2602

## 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 11/21/2007(601041)
  - 2 11/15/2010 (876943)
  - 3 12/16/2010 (884814)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- Date: 11/15/2010 (601041)** CN603687419  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(n)(2)  
Description: Failure to submit plan and specification for the distribution system.
- Date: 11/15/2010 (876943)** CN603687419  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.39(o)(1)  
Description: Failure to submit an Emergency Preparedness Plan by the required deadline.
- 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  
AQUA TEXAS, INC.  
RN104393194**

**§ BEFORE THE  
§  
§ TEXAS COMMISSION ON  
§  
§ ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2010-2047-UTL-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 Aqua Texas, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341 and TEX. WATER CODE ch. 13. 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 east of Fry Road and south of Mound Road in Harris County, Texas (the "Facility").
2. The Respondent owns and operates, in Texas and for compensation, equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use. The Respondent is not exempt from regulation under TEX. WATER CODE ch. 13 or the rules of the Commission.
3. 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.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about December 21, 2010.
5. 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.

6. An administrative penalty in the amount of One Thousand Three Hundred Thirty-Seven Dollars (\$1,337) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Seventy Dollars (\$1,070) of the administrative penalty and Two Hundred Sixty-Seven Dollars (\$267) 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.
7. 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.
8. 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.
9. The Executive Director recognizes that on January 5, 2011, the Respondent provided the TCEQ with an Emergency Preparedness Plan that demonstrates the Facility's ability to provide emergency operations. The plan was deemed acceptable on February 25, 2011.
10. 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.
11. 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.
12. 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 failed to submit to the Executive Director for approval by March 1, 2010, an emergency preparedness plan that demonstrates the Facility's ability to provide emergency operations, in violation of 30 TEX. ADMIN. CODE §§ 290.39(o)(1), 291.162(a) and (j) and TEX. WATER CODE § 13.1395(b)(2) as documented during a record review conducted on December 14, 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 6 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: Aqua Texas, Inc., Docket No. 2010-2047-UTL-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. 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.
3. 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.
4. 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.
5. 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

John S. Redder  
For the Executive Director

\_\_\_\_\_  
Date 6/24/2011

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.

Robert L. Laughman  
Signature

June 13, 2011  
Date

Robert L. Laughman  
Name (Printed or typed)  
Authorized Representative of  
Aqua Texas, Inc.

President  
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.