

Executive Summary – Enforcement Matter – Case No. 41947

City of Rochester

RN101192243

Docket No. 2011-1044-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

Media:

PWS

Small Business:

No

Location(s) Where Violation(s) Occurred:

City of Rochester, 214 Carothers Avenue, Rochester, Haskell 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: November 18, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$1,145

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$1,145

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Poor

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: \$161

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41947
City of Rochester
RN101192243
Docket No. 2011-1044-PWS-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: June 13, 2011
Date(s) of NOE(s): June 17, 2011

Violation Information

Failed to submit a Disinfectant Level Quarterly Operating Report (“DLQOR”) to the Executive Director each quarter by the tenth day of the month following the end of each quarter [30 TEX. ADMIN. CODE § 290.110(e)(4)(A) and (f)(3)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

By July 1, 2011, the Respondent submitted DLQORs for the fourth quarter of 2008 through the second quarter of 2009 and the third and fourth quarters of 2010.

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days, update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified DLQORs; and
- b. Within 45 days, submit written certification demonstrating compliance.

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: Katy Schumann, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-2602; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.
TCEQ SEP Coordinator: N/A
Respondent: The Honorable Marvin Stegemoeller, Mayor, City of Rochester, P.O. Box 186, Rochester, Texas 79544
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	20-Jun-2011	Screening	27-Jun-2011	EPA Due	30-Jun-2009
	PCW	5-Aug-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Rochester
Reg. Ent. Ref. No.	RN101192243
Facility/Site Region	3-Abilene
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	41947	No. of Violations	2
Docket No.	2011-1044-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Katy Schumann
		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** **\$550**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **79.0%** Enhancement **Subtotals 2, 3, & 7** **\$434**

Notes: Enhancement for 13 NOVs with same/similar violations, two NOVs with dissimilar violations, and poor performer classification.

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 \$128
Approx. Cost of Compliance \$257
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$984**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$984**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$1,145**

DEFERRAL **0.0%** Reduction **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$1,145**

Screening Date 27-Jun-2011

Docket No. 2011-1044-PWS-E

PCW

Respondent City of Rochester

Policy Revision 2 (September 2002)

Case ID No. 41947

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101192243

Media [Statute] Public Water Supply

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>)	13	65%
	Other written NOVs	2	4%
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) 69%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for 13 NOVs with same/similar violations, two NOVs with dissimilar violations, and poor performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 79%

Screening Date 27-Jun-2011

Docket No. 2011-1044-PWS-E

PCW

Respondent City of Rochester

Policy Revision 2 (September 2002)

Case ID No. 41947

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101192243

Media [Statute] Public Water Supply

Enf. Coordinator Katy Schumann

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.110(e)(4)(A) and (f)(3)

Violation Description Failed to submit a Disinfectant Level Quarterly Operating Report ("DLQOR") to the Executive Director each quarter by the tenth day of the month following the end of each quarter. Specifically, at the time of the record review, it was documented that the Respondent did not submit DLQORs for the first quarter of 2006 through the first quarter of 2007.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$900

\$100

Violation Events

Number of Violation Events 5 Number of violation days 365

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

Violation Base Penalty \$500

Five quarterly events are recommended, calculated for the time period the reports were not submitted.

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 \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$128

Violation Final Penalty Total \$895

This violation Final Assessed Penalty (adjusted for limits) \$895

Economic Benefit Worksheet

Respondent City of Rochester
Case ID No. 41947
Reg. Ent. Reference No. RN101192243
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	\$45	13-Jun-2011	1-Feb-2012	0.64	\$1	n/a	\$1
Training/Sampling	\$100	13-Jun-2011	1-Feb-2012	0.64	\$3	n/a	\$3
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 estimated cost to update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified quarterly DLQORs. Date required is the record review date and 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]	\$112	10-Apr-2006	10-Apr-2007	1.92	\$11	\$112	\$123
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The estimated cost to submit the DLQORs (\$22.50 per report), calculated for the period in which the reports were due.

Approx. Cost of Compliance

\$257

TOTAL

\$128

Screening Date 27-Jun-2011

Docket No. 2011-1044-PWS-E

PCW

Respondent City of Rochester

Policy Revision 2 (September 2002)

Case ID No. 41947

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101192243

Media [Statute] Public Water Supply

Enf. Coordinator Katy Schumann

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 290.110(e)(4)(A) and (f)(3)

Violation Description

Failed to timely submit a DLQOR to the Executive Director each quarter by the tenth day of the month following the end of each quarter. Specifically, at the time of the record review, it was documented that the Respondent did not timely submit DLQORs for the fourth quarter of 2008 through the second quarter of 2009, and the third and fourth quarters of 2010.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
			X

Percent 1%

Matrix Notes

Less than 30% of the rule requirement was not met.

Adjustment \$990

\$10

Violation Events

Number of Violation Events 5

730 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$50

Five single 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 \$50

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$90

This violation Final Assessed Penalty (adjusted for limits) \$250

Economic Benefit Worksheet

Respondent City of Rochester
Case ID No. 41947
Reg. Ent. Reference No. RN101192243
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

The delayed costs are captured in the economic benefit worksheet associated with Violation No. 1.

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

Customer/Respondent/Owner-Operator: CN600638308 City of Rochester Classification: POOR Rating: 68.50
Regulated Entity: RN101192243 CITY OF ROCHESTER Classification: Site Rating:
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1040002
WATER LICENSING LICENSE 1040002
Location: 214 CAROTHERS AVENUE, ROCHESTER, HASKELL COUNTY, TEXAS
TCEQ Region: REGION 03 - ABILENE
Date Compliance History Prepared: June 24, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: June 24, 2006 to June 24, 2011
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 07/20/2007 (652540)
 - 2 12/07/2007 (653141)
 - 3 07/30/2008 (682894)
 - 4 05/08/2009 (706708)
 - 5 06/29/2010 (828715)
 - 6 05/25/2011 (922099)
 - 7 06/15/2011 (933390)
 - 8 06/15/2011 (933535)
 - 9 10/01/2009 (933573)
 - 10 07/21/2009 (933575)
 - 11 03/27/2009 (933577)
 - 12 07/19/2007 (933582)

- 13 07/19/2007 (933586)
- 14 07/19/2007 (933593)
- 15 07/19/2007 (933597)
- 16 07/19/2007 (933599)
- 17 06/17/2011 (933905)

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

Date: 07/19/2007 (933586) CN600638308
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.110(f)(2)
 30 TAC Chapter 290, SubChapter F 290.110(f)(3)
 Description: This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the fourth quarter of 2006.

Date: 07/19/2007 (933597) CN600638308
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.110(f)(2)
 30 TAC Chapter 290, SubChapter F 290.110(f)(3)
 Description: This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the second quarter of 2006.

Date: 07/19/2007 (933599) CN600638308
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.110(f)(2)
 30 TAC Chapter 290, SubChapter F 290.110(f)(3)
 Description: This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the first quarter of 2006.

Date: 07/19/2007 (933593) CN600638308
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.110(f)(2)
 30 TAC Chapter 290, SubChapter F 290.110(f)(3)
 Description: This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the third quarter of 2006.

Date: 07/19/2007 (933582) CN600638308
 Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.110(f)(2)
 30 TAC Chapter 290, SubChapter F 290.110(f)(3)
 Description: This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the first quarter of 2007.

Date: 07/20/2007 (652540) CN600638308
 Self Report? NO Classification: Major
 Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(2)
 Description: NITRATE

Date: 12/07/2007 (653141) CN600638308
 Self Report? NO Classification: Major
 Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(2)
 Description: NITRATE

Date: 07/31/2008 (682894) CN600638308
 Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 290, SubChapter F 290.110(e)(4)
 Description: FAILURE TO COMPLETE DLQOR DISINFECTION QUARTERLY OPERATION

REPORT.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)
Description: FAILURE TO CONDUCT TANK INSPECTIONS FOR 2004
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.44(h)(4)(A)(i)
Description: FAILURE TO TEST BACKFLOW PREVENTION DEVICE
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.45(f)(4)
Description: FAILURE TO PROVIDE PURCHASE WATER CONTRACT
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(N)
Description: FAILURE TO MAINTAIN WATER METER DEVICE ON WELL
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter F 290.121(c)(3)
Description: FAILURE TO COMPLETE SYSTEM MONITORING PLAN
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(6)
Description: FAILURE TO MAINTAIN WATER STORAGE FACILITIES
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(l)
Description: Failure to have a plant operations manual.

Date: 03/27/2009 (933577) CN600638308
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.110(f)(2)
30 TAC Chapter 290, SubChapter F 290.110(f)(3)
Description: This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the fourth quarter of 2008.

Date: 07/21/2009 (933575) CN600638308
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.110(f)(2)
30 TAC Chapter 290, SubChapter F 290.110(f)(3)
Description: This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the first quarter of 2009.

Date: 10/01/2009 (933573) CN600638308
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.110(f)(2)
30 TAC Chapter 290, SubChapter F 290.110(f)(3)
Description: This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the second quarter of 2009.

Date: 06/29/2010 (828715) CN600638308
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter F 290.110(e)(4)
Description: FAILURE TO COMPLETE DLQOR DISINFECTION QUARTERLY OPERATION REPORT.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(l)
Description: Failure to have a plant operations manual.

Date: 05/25/2011 (922099) CN600638308
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter F 290.110(e)(4)
Description: FAILURE TO COMPLETE DLQOR DISINFECTION QUARTERLY OPERATION REPORT.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(l)
Description: Failure to have a plant operations manual.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)

Description: Failure to inspect tanks annually.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(c)(4)
Description: Failure to have an operable liquid level indicator on the standpipe.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(n)(2)
Description: Failure to have an up-to-date distribution map.

Date: 06/15/2011 (933390) CN600638308
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.110(f)(2)
30 TAC Chapter 290, SubChapter F 290.110(f)(3)
Description: This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the third quarter of 2010.

Date: 06/15/2011 (933535) CN600638308
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.110(f)(2)
30 TAC Chapter 290, SubChapter F 290.110(f)(3)
Description: This system failed to monitor and/or failed to report distribution disinfectant residuals to the TCEQ for the fourth quarter of 2010.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF ROCHESTER
RN101192243

§ BEFORE THE
§ TEXAS COMMISSION ON
§ ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2011-1044-PWS-E

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

The Respondent understands that it 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, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement 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 the Respondent.

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

I. FINDINGS OF FACT

1. The Respondent owns and operates a public water supply at 214 Carothers Avenue in Rochester, Haskell County, Texas (the "Facility") that has approximately 160 service connections and serves at least 25 people per day for at least 60 days per year.

2. During a record review conducted on June 13, 2011, TCEQ staff documented that the Respondent did not submit a Disinfectant Level Quarterly Operating Report ("DLQOR") to the Executive Director each quarter by the tenth day of the month following the end of the quarter. Specifically, at the time of the record review, it was documented that the Respondent did not submit DLQORs for the first quarter of 2006 through the first quarter of 2007, and did not timely submit DLQORs for the fourth quarter of 2008 through the second quarter of 2009, and the third and fourth quarters of 2010.
3. The Respondent received notice of the violations on June 25, 2011.
4. The Executive Director recognizes that by July 1, 2011, the Respondent submitted DLQORs for the fourth quarter of 2008 through the second quarter of 2009 and the third and fourth quarters of 2010.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, the Respondent failed to submit a DLQOR to the Executive Director each quarter by the tenth day of the month following the end of each quarter, in violation of 30 TEX. ADMIN. CODE § 290.110(e)(4)(A) and (f)(3).
3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of One Thousand One Hundred Forty-Five Dollars (\$1,145) 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(b). The Respondent has paid the One Thousand One Hundred Forty-Five Dollar (\$1,145) administrative penalty.

III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of One Thousand One Hundred Forty-Five Dollars (\$1,145) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in

this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Rochester, Docket No. 2011-1044-PWS-E" to:

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

2. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified DLQORs, in accordance with 30 TEX. ADMIN. CODE 290.110; and
 - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

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

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. 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 the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
6. 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.
7. 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.
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

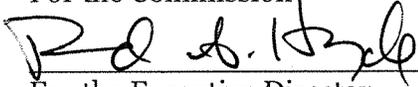
other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

12/2/11

Date

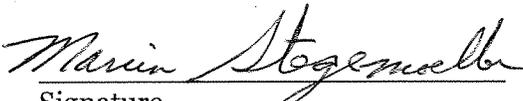
I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Rochester. I am authorized to agree to the attached Agreed Order on behalf of the City of Rochester, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting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

I understand that by entering into this Agreed Order, the City of Rochester waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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

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

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



Signature

9-29-11

Date

Marvin Stegemöller

Name (Printed or typed)
Authorized Representative of
City of Rochester

Mayor

Title

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