

Whit R. Ogilvie

RN103830741

Docket No. 2012-0243-WOC-E

Order Type:

Default Order

Findings Order Justification:

N/A

Media:

WOC

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

near the intersection of State Highway 171 and Farm-to-Market Road 73, Coolidge, Limestone County

Type of Operation:

City of Coolidge public water system ("PWS") and wastewater treatment plant ("WWTP")

Other Significant Matters:

| | |
|---|---|
| Additional Pending Enforcement Actions: | (2012-0152-MWD-E; Respondent: City of Coolidge) |
| Past-Due Penalties: | None |
| Past-Due Fees: | None |
| Other: | None |
| Interested Third-Parties: | None |

| | |
|---|--------------------|
| Texas Register Publication Date: | September 28, 2012 |
|---|--------------------|

| | |
|---------------------------|------|
| Comments Received: | None |
|---------------------------|------|

Penalty Information

| | |
|---------------------------------------|---------|
| Total Penalty Assessed: | \$1,500 |
| Total Paid to General Revenue: | \$0 |
| Total Due to General Revenue: | \$1,500 |

Compliance History Classifications:

Person/CN –N/A

Site/RN –N/A

| | |
|----------------------|----|
| Major Source: | No |
|----------------------|----|

| | |
|------------------------------------|------|
| Statutory Limit Adjustment: | None |
|------------------------------------|------|

| | |
|-----------------------------------|----------------|
| Applicable Penalty Policy: | September 2011 |
|-----------------------------------|----------------|

Whit R. Ogilvie
RN103830741
Docket No. 2012-0243-WOC-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: November 3, 2011; November 17, 2011
Date(s) of NOV(s): N/A
Date(s) of NOE(s): November 7, 2011

Violation Information

1. Failed to obtain a valid public water system operator license prior to performing process control duties in the production, treatment, and distribution of public drinking water [TEX. WATER CODE § 37.003, TEX. HEALTH & SAFETY CODE § 341.034(b) and 30 TEX. ADMIN. CODE §§ 30.381(b) and 30.5(a)].
2. Failed to obtain a valid wastewater operator license prior to performing process control duties in the treatment of wastewater [TEX. WATER CODE §§ 26.0301(c) and 37.003 and TEX. ADMIN. CODE §§ 30.331(b) and 30.5(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
None

Technical Requirements:

1. Immediately:
 - a. Cease operating the WWTP until such time that an effective valid Class "C" or higher wastewater treatment operator license has been obtained; and
 - b. Cease operating the PWS until such time that an effective valid Class "C" or higher water operator license has been obtained.
2. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: July 24, 2012
Date Green Card(s) Signed: August 9, 2012
Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Ryan Rutledge, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
James Murphy, Public Interest Counsel, (512) 239-6363

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

TCEQ Regional Contact: Frank Burlison, Waco Regional Office, (254) 761-3001

Respondent: Whit R. Ogilvie, PO Box 24, Coolidge, Texas 76635

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

| | | | | | | |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| DATES | Assigned | 10-Jan-2012 | Screening | 26-Jan-2012 | EPA Due | |
| | PCW | 20-Jun-2012 | | | | |

| | |
|--|-----------------|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | Whit R. Ogilvie |
| Reg. Ent. Ref. No. | RN103830741 |
| Facility/Site Region | 9-Waco |
| Major/Minor Source | Minor |

| | | | |
|--|---------------------------|------------------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 43435 | No. of Violations | 2 |
| Docket No. | 2012-0243-WOC-E | Order Type | 1660 |
| Media Program(s) | All Occupational Licenses | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Stephen Thompson |
| | | EC's Team | Enforcement Team 3 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$5,000 |

Penalty Calculation Section

| | | |
|---|-------------------|---------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$1,500 |
|---|-------------------|---------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

| | | | |
|---------------------------|------------------|--------------------------------|-----|
| Compliance History | 0.0% Enhancement | Subtotals 2, 3, & 7 | \$0 |
|---------------------------|------------------|--------------------------------|-----|

| | |
|--------------|---------------------------------------|
| Notes | No adjustment for compliance history. |
|--------------|---------------------------------------|

| | | | | |
|--------------------|----|------------------|-------------------|-----|
| 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 | \$9 | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$222 | |

| | | |
|-----------------------------|-----------------------|---------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$1,500 |
|-----------------------------|-----------------------|---------|

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

Reduces or enhances the Final Subtotal by the indicated percentage.

| | |
|--------------|--|
| Notes | |
|--------------|--|

| | |
|-----------------------------|---------|
| Final Penalty Amount | \$1,500 |
|-----------------------------|---------|

| | | |
|-----------------------------------|-------------------------------|---------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$1,500 |
|-----------------------------------|-------------------------------|---------|

| | | | |
|-----------------|----------------|-------------------|-----|
| 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 | Deferral not offered for non-expedited settlement. |
|--------------|--|

| | |
|------------------------|---------|
| PAYABLE PENALTY | \$1,500 |
|------------------------|---------|

Screening Date 26-Jan-2012

Docket No. 2012-0243-WOC-E

PCW

Respondent Whit R. Ogilvie

Policy Revision 3 (September 2011)

Case ID No. 43435

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103830741

Media [Statute] All Occupational Licenses

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>) | 0 | 0% |
| | 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) 0%

>> **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

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 0%

Screening Date 26-Jan-2012

Docket No. 2012-0243-WOC-E

PCW

Respondent Whit R. Ogilvie

Policy Revision 3 (September 2011)

Case ID No. 43435

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103830741

Media [Statute] All Occupational Licenses

Enf. Coordinator Stephen Thompson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 30.5(a) and 30.381(b), Tex. Water Code § 37.003 and Tex. Health & Safety Code § 341.034(b)

Violation Description Failed to obtain a valid public water system operator license prior to performing process control duties in the production, treatment, and distribution of public drinking water, as documented during an investigation conducted on November 17, 2011. Specifically, at the time of the investigation, it was documented that the Respondent was operating the City of Coolidge public water supply system with an expired license.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

| OR | Release | Harm | | | Percent |
|-----------|---------|-------|----------|-------|---------|
| | | Major | Moderate | Minor | |
| Actual | | | | | 0.0% |
| Potential | | | | | |

>> Programmatic Matrix

| Matrix Notes | Falsification | Harm | | | Percent |
|---|---------------|-------|----------|-------|---------|
| | | Major | Moderate | Minor | |
| | | x | | | 5.0% |
| 100% of the rule requirement was not met. | | | | | |

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 3 70 Number of violation days

| | |
|--------------|---|
| daily | |
| weekly | |
| monthly | x |
| quarterly | |
| semiannual | |
| annual | |
| single event | |

mark only one with an x

Violation Base Penalty \$750

Three monthly events are recommended, calculated from the date of the investigation, November 17, 2011, to the date of screening, January 26, 2012.

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 \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$4

Violation Final Penalty Total \$750

This violation Final Assessed Penalty (adjusted for limits) \$750

Economic Benefit Worksheet

Respondent Whit R. Ogilvie
Case ID No. 43435
Req. Ent. Reference No. RN103830741
Media All Occupational Licenses
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) | \$111 | 17-Nov-2011 | 31-Aug-2012 | 0.79 | \$4 | n/a | \$4 |

Notes for DELAYED costs

The delayed cost includes the amount to apply for and obtain a Class "C" water operator license, calculated from the date of the investigation to the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$111

TOTAL

\$4

Screening Date 26-Jan-2012

Docket No. 2012-0243-WOC-E

PCW

Respondent Whit R. Ogilvie

Policy Revision 3 (September 2011)

Case ID No. 43435

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103830741

Media [Statute] All Occupational Licenses

Enf. Coordinator Stephen Thompson

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 30.5(a) and 30.331(b) and Tex. Water Code §§ 26.0301(c) and 37.003

Violation Description

Failed to obtain a valid wastewater operator license prior to performing process control duties in the treatment of wastewater, as documented during an investigation conducted on November 3, 2011. Specifically, at the time of the investigation, it was documented that the Respondent was operating the City of Coolidge wastewater treatment plant with an expired license.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR

| Release | Harm | | | Percent |
|-----------|-------|----------|-------|---------|
| | Major | Moderate | Minor | |
| Actual | | | | 0.0% |
| Potential | | | | |

>> Programmatic Matrix

| Falsification | Harm | | | Percent |
|---------------|-------|----------|-------|---------|
| | Major | Moderate | Minor | |
| | x | | | 5.0% |

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 3 84 Number of violation days

mark only one with an x

| | |
|--------------|---|
| daily | |
| weekly | |
| monthly | x |
| quarterly | |
| semiannual | |
| annual | |
| single event | |

Violation Base Penalty \$750

Three monthly events are recommended, calculated from the date of the investigation, November 3, 2011, to the date of screening, January 26, 2012.

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 \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$750

This violation Final Assessed Penalty (adjusted for limits) \$750

Economic Benefit Worksheet

Respondent Whit R. Ogilvie
Case ID No. 43435
Req. Ent. Reference No. RN103830741
Media All Occupational Licenses
Violation No. 2

| Percent Interest | Years of Depreciation |
|------------------|-----------------------|
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| No commas or \$ | | | | | | | |

Delayed Costs

| | | | | | | | |
|--------------------------|-------|------------|-------------|------|-----|-----|-----|
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.00 | \$0 | \$0 | \$0 |
| Land | | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 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) | \$111 | 3-Nov-2011 | 31-Aug-2012 | 0.83 | \$5 | n/a | \$5 |

Notes for DELAYED costs

The delayed cost includes the amount to apply for and obtain a Class "C" wastewater treatment operator license, calculated from the date of the investigation to the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$111

TOTAL

\$5

Compliance History Report

Customer/Respondent/Owner-Operator: CN602346223 OGILVIE, WHIT R Classification: Rating:
Regulated Entity: RN103830741 OGILVIE, WHIT R Classification: Site Rating:
ID Number(s): WATER LICENSING LICENSE WO0019452
Location:
TCEQ Region: REGION 09 - WACO
Date Compliance History Prepared: January 26, 2012
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 26, 2007 to January 26, 2012
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. If **YES**, when did the change(s) in owner or operator occur? N/A
6. Rating Date: N/A Repeat Violator: 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.)
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 01/05/2012 (964856)
 - 2 01/24/2012 (968727)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - 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
WHIT R. OGILVIE;
RN103830741**

**§
§
§
§
§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2012-0243-WOC-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7, 26 and 37, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Whit R. Ogilvie ("Respondent").

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

FINDINGS OF FACT

1. Respondent performs process control duties, as defined in 30 TEX. ADMIN. CODE § 290.38(63), in the production, treatment, or distribution of public drinking water at a public water system located near the intersection of State Highway 171 and Farm-to-Market Road 73 in Coolidge, Limestone County, Texas (the "PWS Facility"). The PWS Facility provides water for human consumption, has 358 service connections, and serves at least 25 people per day for at least 60 days per year. As such, the PWS Facility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(66). Therefore, Respondent is subject to TCEQ jurisdiction pursuant to TEX. WATER CODE chs. 26 and 37 and TEX. HEALTH & SAFETY CODE ch. 341.
2. Respondent performs process control duties, as defined in TEX. WATER CODE § 26.301(c), at a sewage treatment facility or supervises the maintenance of a sewage collection system at a wastewater treatment facility located near the intersection of State Highway 171 and Farm-to-Market Road 73 in Coolidge, Limestone County, Texas (the "WWTP Facility"). The WWTP Facility is installed for the purpose of treating, neutralizing, or stabilizing wastewater, the operation of which requires a wastewater disposal permit from the Commission. As such, the WWTP Facility is a wastewater treatment facility as defined in 30 TEX. ADMIN. CODE § 30.337(10). Therefore, Respondent is subject to TCEQ jurisdiction pursuant to TEX. WATER CODE chs. 26 and 37.
3. During an investigation conducted on November 17, 2011, a TCEQ Waco Regional Office investigator documented that Respondent failed to obtain a valid public water system operator license prior to performing process control duties in the production, treatment, and distribution of public drinking water at the PWS Facility. Specifically, Respondent was operating the City of Coolidge public water supply system with an expired license.

4. Respondent received notice of the violation in Finding of Fact No. 3 on or about November 12, 2011.
5. During an investigation conducted on November 3, 2011, a TCEQ Waco Regional Office investigator documented that Respondent failed to obtain a valid wastewater operator license prior to performing process control duties in the treatment of wastewater at the WWTP Facility. Specifically, Respondent was operating the City of Coolidge wastewater treatment plant with an expired license.
6. Respondent received notice of the violation in Finding of Fact No. 5 on or about November 22, 2011.
7. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Whit R. Ogilvie" (the "EDPRP") in the TCEQ Chief Clerk's office on July 24, 2012.
8. By letter dated July 24, 2012, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on August 9, 2012, as evidenced by the signature on the card.
9. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 26 and 37, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Respondent failed to obtain a valid public water system operator license prior to performing process control duties in the production, treatment, and distribution of public drinking water, in violation of TEX. WATER CODE § 37.003, TEX. HEALTH & SAFETY CODE § 341.034(b) and 30 TEX. ADMIN. CODE §§ 30.381(b) and 30.5(a).
3. As evidenced by Finding of Fact No. 5, Respondent failed to obtain a valid wastewater operator license prior to performing process control duties in the treatment of wastewater, in violation of TEX. WATER CODE §§ 26.0301(c) and 37.003 and TEX. ADMIN. CODE §§ 30.331(b) and 30.5(a).
4. As evidenced by Findings of Fact Nos. 7 and 8, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 9, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, 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.
7. An administrative penalty in the amount of one thousand five hundred dollars (\$1,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of one thousand five hundred dollars (\$1,500.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Whit R. Ogilvie; Docket No. 2012-0243-WOC-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
3. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this order, Respondent shall:
 - i. Cease operating the WWTP Facility until such time that an effective valid Class "C" or higher wastewater treatment operator license has been obtained, in accordance with 30 TEX. ADMIN. CODE ch. 30; and
 - ii. Cease operating the PWS Facility until such time that an effective valid Class "C" or higher water operator license has been obtained, in accordance with 30 TEX. ADMIN. CODE ch. 30.
 - b. Within 45 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, 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

with a copy to:

Frank Burlison, Waste Section Manager
Texas Commission on Environmental Quality
Waco Regional Office
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to the City of Coolidge and to personnel who maintain day-to-day control over the PWS Facility and WWTP Facility operations referenced in this Order.
6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV=T CODE § 2001.144.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF RYAN RUTLEDGE

STATE OF TEXAS

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COUNTY OF TRAVIS

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"My name is Ryan Rutledge. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Whit R. Ogilvie" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on July 24, 2012.

The EDPRP was mailed to Respondent's last known address on July 24, 2012, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on August 9, 2012, as evidenced by the signature on the card.

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

Ryan Rutledge, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Ryan Rutledge, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 8th day of October, A.D. 2012.

Notary Signature

