

**Executive Summary – Enforcement Matter – Case No. 40600**

**City of Bartlett**

**RN101375590**

**Docket No. 2010-1749-PWS-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

PWS

**Small Business:**

No

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

City of Bartlett, two blocks west of State Highway 95 on West Jackson Street, Bartlett, Williamson 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:** September 30, 2011

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$672

**Amount Deferred for Expedited Settlement:** \$134

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

**Total Paid to General Revenue:** \$538

**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:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

**Executive Summary – Enforcement Matter – Case No. 40600**

**City of Bartlett**

**RN101375590**

**Docket No. 2010-1749-PWS-E**

***Investigation Information***

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

**Complaint Information:** N/A

**Date(s) of Investigation:** September 15, 2010

**Date(s) of NOE(s):** September 29, 2010

***Violation Information***

1. Failed to provide two or more wells having a total capacity of 0.6 gallons per minute ("gpm") per connection [30 TEX. ADMIN. CODE § 290.45(b)(1)(D)(i) and (d)(1) and TEX. HEALTH & SAFETY CODE § 341.0315(a)(1)].
2. Failed to provide at least two service pumps with a total capacity of three times the Maximum Daily Demand ("MDD") [30 TEX. ADMIN. CODE § 290.45(d)(2)(B)(iv) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 180 days:
  - i. Provide a total well production capacity of 0.6 gpm for the community portion of the distribution system and 240 gallons per person per day for the non-community portion; and
  - ii. Provide two or more service pumps with a total capacity of at least three times the MDD of 175 gpm for the non-community portion of the distribution system.
- b. Within 195 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

**Executive Summary – Enforcement Matter – Case No. 40600**

**City of Bartlett**

**RN101375590**

**Docket No. 2010-1749-PWS-E**

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Stephen Thompson, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-2558; Debra Barber, Enforcement Division, MC 219, (512) 239-0412.

**TCEQ SEP Coordinator:** N/A

**Respondent:** The Honorable James M. Grant, Mayor, City of Bartlett, P.O. Box H, Bartlett, Texas 76511

**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>	4-Oct-2010	<b>Screening</b>	25-Oct-2010	<b>EPA Due</b>	
	<b>PCW</b>	17-Nov-2010				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	City of Bartlett		
<b>Reg. Ent. Ref. No.</b>	RN101375590		
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	40600	<b>No. of Violations</b>	2
<b>Docket No.</b>	2010-1749-PWS-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Stephen Thompson
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

**Notes**

**Culpability**   Enhancement **Subtotal 4**

**Notes**

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  Enhancement\* **Subtotal 6**

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

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

**Notes**

**PAYABLE PENALTY**

Screening Date 25-Oct-2010

Docket No. 2010-1749-PWS-E

PCW

Respondent City of Bartlett

Policy Revision 2 (September 2002)

Case ID No. 40600

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101375590

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> )	2	10%
	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)** 12%

>> 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 two NOVs with same/similar violations and one NOV with dissimilar violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 12%

Screening Date 25-Oct-2010

Docket No. 2010-1749-PWS-E

PCW

Respondent City of Bartlett

Policy Revision 2 (September 2003)

Case ID No. 40600

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101375590

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.45(b)(1)(D)(i) and (d)(1) and Tex. Health & Safety Code § 341.0315(a)(1)

Violation Description Failed to provide two or more wells having a total capacity of 0.6 gallons per minute ("gpm") per connection. Specifically, at the time of the record review, it was documented that the community portion of the distribution system requires a well production capacity of 395 gpm and the non-community portion requires a well production capacity of 175 gpm. Combined, the Facility is required to provide a total well production capacity of 570 gpm, however, only 330 gpm is currently being provided, which is a 42% deficiency.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				10%
Potential		X		

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
				0%

Matrix Notes Failure to provide adequate well production capacity may result in water outages which could introduce a significant amount of contaminants which would not exceed levels protective of human health into the drinking water supply.

Adjustment \$900

\$100

Violation Events

Number of Violation Events 1 Number of violation days 40

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

Violation Base Penalty \$100

One quarterly event is recommended, calculated from the date of the record review, September 15, 2010, to the date of screening, October 25, 2010.

Good Faith Efforts to Comply

0.0% Reduction \$0

	Reduction	
	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 \$100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5,063

Violation Final Penalty Total \$112

This violation Final Assessed Penalty (adjusted for limits) \$112

## Economic Benefit Worksheet

**Respondent** City of Bartlett  
**Case ID No.** 40600  
**Reg. Ent. Reference No.** RN101375590  
**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)	\$50,000	19-Jan-2010	1-Jul-2011	1.45	\$241	\$4,822	\$5,063
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 provide an additional production capacity of 240 gpm, calculated from the date of the investigation originally documenting the violation 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

\$50,000

**TOTAL**

\$5,063

Screening Date 25-Oct-2010

Docket No. 2010-1749-PWS-E

PCW

Respondent City of Bartlett

Policy Revision 2 (September 2002)

Case ID No. 40600

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101375590

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 290.45(d)(2)(B)(iv) and Tex. Health & Safety Code § 341.0315(c)

Violation Description

Failed to provide at least two service pumps with a total capacity of three times the Maximum Daily Demand ("MDD"). Specifically, at the time of the record review, it was documented that the MDD of the noncommunity portion of the distribution system was 175 gpm, therefore, the required service pump capacity is 575 gpm. The Facility does not currently provide any service pump capacity to the noncommunity portion of the distribution system, which is a 100% deficiency.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to provide adequate pressure tank capacity may result in low water pressure which could lead to backflow and siphonage which could introduce a significant amount of contaminants which would exceed levels protective of human health into the drinking water supply.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 2

40 Number of violation days

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

Violation Base Penalty \$500

Two monthly events are recommended, calculated from the date of the record review, September 15, 2010, to the date of screening, October 25, 2010.

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 \$1,519

Violation Final Penalty Total \$560

This violation Final Assessed Penalty (adjusted for limits) \$560

## Economic Benefit Worksheet

**Respondent** City of Bartlett  
**Case ID No.** 40600  
**Reg. Ent. Reference No.** RN101375590  
**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)	\$15,000	19-Jan-2010	1-Jul-2011	1.45	\$72	\$1,447	\$1,519
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 repair the existing service pumps and put them on-line, calculated from the date of the investigation originally documenting the violation 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

\$15,000

**TOTAL**

\$1,519

# Compliance History Report

Customer/Respondent/Owner-Operator: CN600514202 City of Bartlett Classification: AVERAGE Rating: 2.14

Regulated Entity: RN101375590 CITY OF BARTLETT Classification: Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2460006  
 WATER LICENSING LICENSE 2460006

Location: TWO BLOCKS W OF SH 95 ON W JACKSON ST, BARTLETT, WILLIAMSON CO, TX

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: October 25, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: October 25, 2005 to October 25, 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. (CEEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 01/31/2006 | (453363) |
| 2 | 07/15/2006 | (485134) |
| 3 | 12/10/2007 | (609565) |
| 4 | 10/28/2008 | (706576) |
| 5 | 08/02/2010 | (842660) |
| 6 | 09/30/2010 | (864107) |
- E. Written notices of violations (NOV). (CEEDS Inv. Track. No.)
- |              |   |                          |
|--------------|---|--------------------------|
| Date:        | 10/31/2008  | (706576)CN600514202      |
| Self Report? | NO  | Classification: Moderate |
| Citation:    | 30 TAC Chapter 290, SubChapter D 290.44(h)(1)(A)<br>30 TAC Chapter 290, SubChapter D 290.44(h)(4)   |                          |
| Description: | Failure to provide certification for annual tests of the backflow prevention assemblies located at the wastewater treatment plant and the nursing home. |                          |
| Self Report? | NO  | Classification: Moderate |
| Citation:    | 30 TAC Chapter 290, SubChapter D 290.46(j)  |                          |
| Description: | Failure to perform customer service inspections on new construction prior to providing continuous water service.  |                          |
| Self Report? | NO  | Classification: Moderate |
| Citation:    | 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(K)  |                          |
| Description: | Failure to properly seal the wellhead around Well No. 2.  |                          |
| Self Report? | NO  | Classification: Moderate |
| Citation:    | 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)  |                          |

30 TAC Chapter 290, SubChapter D 290.43(e)  
 Description: Failure to provide an intruder-resistant fence around Well No. 2 and around the water plant.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(4)  
 Description: Failure to maintain the service pumps and distribution system lines in a watertight condition.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(e)  
 30 TAC Chapter 290, SubChapter D 290.46(e)(4)(B)  
 Description: Failure to operate the water system at all times under the direct supervision of a water works operator holding a Class C-Groundwater or higher license.  
 Self Report? NO Classification: Minor  
 Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)  
 Description: Failure to develop and maintain a chemical and microbiological monitoring plan.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(1)  
 Description: Failure to calibrate the well flow meters at least once every 12 months.

Date: 02/26/2010 (789055) CN600514202  
 Self Report? NO Classification: Major  
 Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(D)(i)  
 30 TAC Chapter 290, SubChapter D 290.45(d)(1)  
 Description: Failure to provide adequate production capacity. The City of Bartlett failed to respond to the notice of violation for this violation by the first required due of of April 26, 2010 and the second due date of August 13, 2010.  
 Self Report? NO Classification: Major  
 Citation: 30 TAC Chapter 290, SubChapter D 290.45(d)(2)(B)(iv)  
 Description: Failure to provide adequate service pump capacity to the prison portion of the distribution system. The City of Bartlett failed to respond to the notice of violation for this violation by the first required due of of April 26, 2010 and the second due date of August 13, 2010.

Date: 07/30/2010 (842660) CN600514202  
 Self Report? NO Classification: Major  
 Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(D)(i)  
 30 TAC Chapter 290, SubChapter D 290.45(d)(1)  
 Description: Failure to provide adequate production capacity. The City of Bartlett failed to respond to the notice of violation for this violation by the first required due of of April 26, 2010 and the second due date of August 13, 2010.  
 Self Report? NO Classification: Major  
 Citation: 30 TAC Chapter 290, SubChapter D 290.45(d)(2)(B)(iv)  
 Description: Failure to provide adequate service pump capacity to the prison portion of the distribution system. The City of Bartlett failed to respond to the notice of violation for this violation by the first required due of of April 26, 2010 and the second due date of August 13, 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  
THE CITY OF BARTLETT  
RN101375590**

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

## **AGREED ORDER DOCKET NO. 2010-1749-PWS-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 the City of Bartlett ("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 appear before the Commission and together stipulate that:

1. The Respondent owns and operates a public water supply two blocks west of State Highway 95 on West Jackson Street in Bartlett, Williamson County, Texas (the "Facility") that has approximately 658 service connections and serves at least 25 people per day for at least 60 days per year.
2. 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.
3. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about October 4, 2010.
4. 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.
5. An administrative penalty in the amount of Six Hundred Seventy-Two Dollars (\$672) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Five Hundred Thirty-Eight Dollars (\$538) of the administrative penalty and One Hundred Thirty-Four Dollars (\$134) 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.

6. 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.
7. 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.
8. 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.
9. 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.
10. 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:

1. Failed to provide two or more wells having a total capacity of 0.6 gallons per minute ("gpm") per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(D)(i) and (d)(1) and TEX. HEALTH & SAFETY CODE § 341.0315(a)(1), as documented during a record review conducted on September 15, 2010.
2. Failed to provide at least two service pumps with a total capacity of three times the Maximum Daily Demand ("MDD"), in violation of 30 TEX. ADMIN. CODE § 290.45(d)(2)(B)(iv) and TEX. HEALTH & SAFETY CODE § 341.0315(c), as documented during a record review conducted on September 15, 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 5 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: City of Bartlett, Docket No. 2010-1749-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. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 180 days after the effective date of this Agreed Order:
    - i. Provide a total well production capacity of 0.6 gpm for the community portion of the distribution system and 240 gallons per person per day for the non-community portion, in accordance with 30 TEX. ADMIN. CODE § 290.45; and
    - ii. Provide two or more service pumps with a total capacity of at least three times the MDD of 175 gpm for the non-community portion of the distribution system, in accordance with 30 TEX. ADMIN. CODE § 290.45.
  - b. Within 195 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:

Water Section Manager  
Austin Regional Office  
Texas Commission on Environmental Quality  
2800 S IH 35, Suite 100  
Austin, Texas 78704-5712

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. 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.
6. 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.
7. 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

*Red B. Hyde*

For the Executive Director

10/6/11  
Date

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.

*James M. Grant*  
Signature

19 Aug 2011  
Date

JAMES M. GRANT  
Name (Printed or typed)  
Authorized Representative of  
City of Bartlett

MAYOR  
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.