

Executive Summary – Enforcement Matter – Case No. 41707
David Fenoglio d/b/a Sunset Water System
RN102693579
Docket No. 2011-0824-PWS-E

Order Type:
Default Order

Findings Order Justification:
N/A

Media:
PWS

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
the northwest corner of the intersection of West Front Street and Cottage Grove Drive, Sunset, Montague County

Type of Operation:
public water system

Other Significant Matters:
Additional Pending Enforcement Actions: None
Past-Due Penalties: None
Past-Due Fees: None
Other: None
Interested Third-Parties: None

Texas Register Publication Date: December 30, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$4,238
Total Paid to General Revenue: \$0
Total Due to General Revenue: \$4,238

Compliance History Classifications:
Person/CN – N/A
Site/RN – N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41707
David Fenoglio d/b/a Sunset Water System
RN102693579
Docket No. 2011-0824-PWS-E

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: March 22, 2011
Date(s) of NOV(s): April 12, 2010; January 5, 2011
Date(s) of NOE(s): May 11, 2011

Violation Information

1. Failed to verify the accuracy of the manual disinfectant residual analyzer at least once every 30 days using chlorine solutions of known concentrations [30 TEX. ADMIN. CODE § 290.46(s)(2)(C)(i)].
2. Failed to provide a total storage capacity of at least 200 gallons per connection [30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(ii) and TCEQ Agreed Order Docket No. 2007-1711-PWS-E, Ordering Provision No. 2.e.i.].
3. Failed to provide roof openings on the ground storage tanks that are at least 30 inches in diameter [30 TEX. ADMIN. CODE § 290.43(c)(3) and TCEQ Agreed Order Docket No. 2007-1711-PWS-E, Ordering Provision No. 2.c.i.].
4. Failed to keep on file and make available for review copies of well completion data [30 TEX. ADMIN. CODE § 290.46(n)(3) and TCEQ Agreed Order Docket No. 2007-1711-PWS-E, Ordering Provision No. 2.c.ii.].
5. Failed to plug abandoned wells or submit test results proving that the wells are in a non-deteriorated condition [30 TEX. ADMIN. CODE § 290.46(u) and TCEQ Agreed Order Docket No. 2007-1711-PWS-E, Ordering Provision No. 2.e.ii.].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. Within 30 days, begin verifying the accuracy of the manual disinfectant residual analyzer at least once every 30 days using chlorine solutions of known concentrations.
2. Within 60 days:
 - a. Begin keeping on file and make available for review copies of well completion data, including but not limited to cement bonding logs or other documentation adequate to ensure complete sealing of the annular space between the casing and the drill hole for Well Nos. 1 and 3; and
 - b. Submit test results proving that Well Nos. 2 and 3 are in a non-deteriorated condition.
3. Within 90 days:
 - a. Provide a total storage capacity of at least 200 gallons per connection; and
 - b. Provide roof openings on the ground storage tanks that are at least 30 inches in diameter.
4. Submit written certification to demonstrate compliance:
 - a. Within 45 days for Technical Requirement No. 1;
 - b. Within 75 days for Technical Requirement No. 2; and
 - c. Within 105 days for Technical Requirement No. 3.

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RN102693579
Docket No. 2011-0824-PWS-E

Litigation Information

Date Petition(s) Filed: November 1, 2011

Date(s) Green Card(s) Signed: November 4, 2011

Date(s) Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Kari L. Gilbreth, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Amy Swanholm, Public Interest Counsel, (512) 239-6363

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

TCEQ Regional Contact: Cliff Moore, Abilene Regional Office, (325) 698-6115

Respondent: David Fenoglio, P.O. Box 418, Sunset, Texas 76251

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	16-May-2011	Screening	23-May-2011	EPA Due	
	PCW	15-Jun-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	David Fenoglio d/b/a Sunset Water System
Reg. Ent. Ref. No.	RN102693579
Facility/Site Region	3-Abilene
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	41707	No. of Violations	5
Docket No.	2011-0824-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Stephen Thompson
		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,100
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	35.0% Enhancement	Subtotals 2, 3, & 7	\$1,085
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Notes: Enhancement due to two NOVs with same/similar violations and one agreed final enforcement order without a denial of liability.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$1,235
 Approx. Cost of Compliance: \$6,750
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,185
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OTHER FACTORS AS JUSTICE MAY REQUIRE	1.3%	Adjustment	\$53
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement recommended for the recovery of avoided costs of compliance associated with Violation No. 1.

Final Penalty Amount	\$4,238
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$4,238
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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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	\$4,238
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Screening Date 23-May-2011

Docket No. 2011-0824-PWS-E

PCW

Respondent David Fenoglio d/b/a Sunset Water System

Policy Revision 2 (September 2002)

Case ID No. 41707

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102693579

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	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	1	25%
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) 35%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement due to two NOVs with same/similar violations and one agreed final enforcement order without a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 35%

Screening Date 23-May-2011

Docket No. 2011-0824-PWS-E

PCW

Respondent David Fenoglio d/b/a Sunset Water System

Policy Revision 2 (September 2002)

Case ID No. 41707

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102693579

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.46(s)(2)(C)(i)

Violation Description Failed to verify the accuracy of the manual disinfectant residual analyzer at least once every 30 days using chlorine solutions of known concentrations.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (25%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0%).

Matrix Notes Failure to provide an accurate testing method to monitor the effectiveness of the disinfectant procedures could result in the non-detection of improperly tested water and potentially expose the public to significant amounts of contaminants which would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 3 Number of violation days 62

Table for event frequency: 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, March 22, 2011, to the date of screening, May 23, 2011.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (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 \$53

Violation Final Penalty Total \$1,025

This violation Final Assessed Penalty (adjusted for limits) \$1,025

Economic Benefit Worksheet

Respondent David Fenoglio d/b/a Sunset Water System
Case ID No. 41707
Req. Ent. Reference No. RN102693579
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
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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

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]	\$50	22-Mar-2011	23-May-2011	1.09	\$3	\$50	\$53
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided costs include the estimated amount to maintain a log of the monthly verification procedures performed on the disinfectant residual analyzers, calculated from the date of the investigation to the date of screening.

Approx. Cost of Compliance \$50

TOTAL \$53

Screening Date 23-May-2011

Docket No. 2011-0824-PWS-E

PCW

Respondent David Fenoglio d/b/a Sunset Water System

Policy Revision 2 (September 2002)

Case ID No. 41707

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102693579

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 290.45(b)(1)(C)(ii) and TCEQ Agreed Order Docket No. 2007 1711-PWS-E, Ordering Provision No. 2.e.i.

Violation Description

Failed to provide a total storage capacity of at least 200 gallons per connection. Specifically, at the time of the investigation, it was documented that the Facility serves 143 connections and is required to have a total storage capacity of 28,600 gallons. However, the Facility currently provides 26,400 gallons of storage capacity, which is an 8% deficiency.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					5%
Potential			x		

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes

Without adequate storage capacity, the Facility may experience water shortages and as a result expose consumers to an insignificant amount of contaminants which do not exceed levels protective of human health.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 1 638 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$50

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

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

Violation Subtotal \$50

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$883

Violation Final Penalty Total \$68

This violation Final Assessed Penalty (adjusted for limits) \$68

Economic Benefit Worksheet

Respondent David Fenoglio d/b/a Sunset Water System
Case ID No. 41707
Req. Ent. Reference No. RN102693579
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
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	\$5,000	23-Aug-2009	1-Mar-2012	2.52	\$42	\$841	\$883
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 necessary to provide adequate storage capacity for the Facility, calculated from the effective date of TCEQ Agreed Order Docket No. 2007-1711-PWS-E 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

\$5,000

TOTAL

\$883

Screening Date 23-May-2011

Docket No. 2011-0824-PWS-E

PCW

Respondent David Fenoglio d/b/a Sunset Water System

Policy Revision 2 (September 2002)

Case ID No. 41707

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102693579

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 290.43(c)(3) and TCEQ Agreed Order Docket No. 2007-1711 PWS-E, Ordering Provision No. 2.c.i.

Violation Description

Failed to provide roof openings on the ground storage tanks that are at least 30 inches in diameter. Specifically, at the time of the investigation, it was documented that the roof openings on all three of the Facility's ground storage tanks were less than 30 inches in diameter.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					10%
Potential			x		

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes

Failure to provide sufficient access to the interior of the storage tanks would not allow for adequate inspection and could lead to the non-detection of defects causing a loss of the tanks' integrity and customers could be exposed to a significant amount of contaminants which would not exceed levels protective of human health.

Adjustment \$900

\$100

Violation Events

Number of Violation Events 21 638 Number of violation days

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

Violation Base Penalty \$2,100

Twenty-one quarterly events (seven events for each tank) are recommended, calculated from the effective date of TCEQ Agreed Order Docket No. 2007-1711-PWS-E, August 23, 2009, to the date of screening, May 23, 2011.

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 \$2,100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$265

Violation Final Penalty Total \$2,871

This violation Final Assessed Penalty (adjusted for limits) \$2,871

Economic Benefit Worksheet

Respondent David Fenoglio d/b/a Sunset Water System
Case ID No. 41707
Req. Ent. Reference No. RN102693579
Media Public Water Supply
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$1,500	23-Aug-2009	1-Mar-2012	2.52	\$13	\$252	\$265
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 necessary to provide the ground storage tanks with access openings that are at least 30 inches in diameter, calculated from the effective date of TCEQ Agreed Order Docket No. 2007-1711-PWS-E 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

\$1,500

TOTAL

\$265

Screening Date 23-May-2011

Docket No. 2011-0824-PWS-E

PCW

Respondent David Fenoglio d/b/a Sunset Water System

Policy Revision 2 (September 2002)

Case ID No. 41707

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102693579

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 290.46(n)(3) and TCEQ Agreed Order Docket No. 2007-1711 PWS-E, Ordering Provision No. 2.c.ii.

Violation Description

Failed to keep on file and make available for review copies of well completion data. Specifically, at the time of the investigation, it was documented that the well completion data for Well Nos. 1 and 3 did not include cement bonding logs or other documentation adequate to ensure complete sealing of the annular space between the casing and the drill hole.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%
100% of the rule requirement was not met.					

Adjustment \$900

\$100

Violation Events

Number of Violation Events 1 638 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$100

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

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

Violation Subtotal \$100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$26

Violation Final Penalty Total \$137

This violation Final Assessed Penalty (adjusted for limits) \$137

Economic Benefit Worksheet

Respondent David Fenoglio d/b/a Sunset Water System
Case ID No. 41707
Req. Ent. Reference No. RN102693579
Media Public Water Supply
Violation No. 4

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)	\$150	23-Aug-2009	1-Feb-2012	2.44	\$1	\$24	\$26
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 necessary to acquire and maintain adequate documentation of the wells' sealing information, calculated from the effective date of TCEQ Agreed Order Docket No. 2007-1711-PWS-E 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

\$150

TOTAL

\$26

Screening Date 23-May-2011

Docket No. 2011-0824-PWS-E

PCW

Respondent David Fenoglio d/b/a Sunset Water System

Policy Revision 2 (September 2002)

Case ID No. 41707

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102693579

Media [Statute] Public Water Supply

Enf. Coordinator Stephen Thompson

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 290.46(u) and TCEQ Agreed Order Docket No. 2007-1711-PWS-E, Ordering Provision No. 2.e.ii.

Violation Description

Failed to plug abandoned wells or submit test results proving that the wells are in a non-deteriorated condition. Specifically, at the time of the investigation, it was documented that raw water sampling had been conducted, but the records were inadequate to demonstrate that the samples had been taken from Well Nos. 2 and 3.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%
100% of the rule requirement was not met.					

Adjustment \$900

\$100

Violation Events

Number of Violation Events 1 638 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$100

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDPRP/Settlement Offer

\$0

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 \$9

Violation Final Penalty Total \$137

This violation Final Assessed Penalty (adjusted for limits) \$137

Economic Benefit Worksheet

Respondent David Fenoglio d/b/a Sunset Water System
Case ID No. 41707
Req. Ent. Reference No. RN102693579
Media Public Water Supply
Violation No. 5

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	23-Aug-2009	1-Feb-2012	2.44	\$0	\$8	\$9
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 necessary to obtain affidavits from the individual who conducted the raw water sampling to confirm that the samples were taken from Well Nos. 2 and 3, calculated from the effective date of TCEQ Agreed Order Docket No. 2007-1711-PWS-E 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

TOTAL

\$9

Compliance History

Customer/Respondent/Owner-Operator: CN601361512 FENOGLIO, DAVID Classification: Rating:
Regulated Entity: RN102693579 SUNSET WATER SYSTEM Classification: Site Rating:
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1690007
WATER LICENSING LICENSE 1690007
Location: NW CORNER OF THE INTX OF W FRONT ST AND
COTTAGE GROVE DR IN SUNSET, MONTAGUE COUNTY, TEXAS
TCEQ Region: REGION 03 - ABILENE
Date Compliance History Prepared: May 26, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: May 26, 2006 to May 26, 2011
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.

Effective Date: 08/23/2009

ADMINORDER 2007-1711-PWS-E

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(2)

Rqmt Prov: 2003-0038-PWS-E, Ordering Provision 3.e. ORDER

Description: Failed to maintain and keep available for review records related to the annual tank inspections for the three ground storage and pressure tanks as required by 30 TAC 290.46(m)(1).

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(n)(3)

Rqmt Prov: 2003-0038-PWS-E, Prov. 3.f. ORDER

Description: Failed to maintain and keep available for review records related to sealing information, including for pressure cementing, or a cement bonding log or other documentaiton to assure complete sealing of the annular space between the casing and drill hole of Wells #1 & #3.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(C)(ii)

5A THSC Chapter 341, SubChapter A 341.0315(c)

Rqmt Prov: 2003-0038-PWS-E, Prov.5(b) ORDER

Description: Failure to provide total storage capacity of 200 gallons per connection.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(2)

Description: Failure to provide 30" rood access openings on the three GST'S.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)(B)

Description: Failure to inspect the interior of the pressure tanks that are provided with an inspection port.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.42(l)

Description: Failure to have a plant operations manual.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(u)

Rqmt Prov: 2003-0038-PWS-E,Prov. 5.c. ORDER

Description: Failure to plug wells #2 and #3, or submit test results for approval proving that the wells are in a non-deteriorated condition.

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 09/21/2007 (571351)

2 04/12/2010 (797159)

3 10/07/2010 (864230)

4 01/06/2011 (884833)

5 05/11/2011 (908909)

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

Date: 04/12/2010 (797159) CN601361512

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.41(b)

Description: Failure to verify the accuracy of the manual chlorine analyzer.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)

Description: Failure to have a sanitary control easement or sanitary control easements covering land within 150 feet of the well, or executive director approval for a substitute authorized by this subsection.

Date: 01/05/2011 (884833) CN601361512

Self Report? NO Classification: Moderate

Citation: 2003-0038-PWS-E, Prov. 3.f. ORDER

30 TAC Chapter 290, SubChapter D 290.46(n)(3)

Description: Failed to maintain and keep available for review records related to sealing information, including for pressure cementing, or a cement bonding log or other documentaiton to assure complete sealing of the annular space between the casing and drill hole of Wells #1 & #3.

Self Report? NO Classification: Moderate

Citation: 2003-0038-PWS-E, Prov.5(b) ORDER

30 TAC Chapter 290, SubChapter D 290.45(b)(1)(C)(ii)

5A THSC Chapter 341, SubChapter A 341.0315(c)

Description: Failure to provide total storage capacity of 200 gallons per connection.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(2)

Description: Failure to provide 30" rood access openings on the three GST'S.

Self Report? NO Classification: Moderate

Citation: 2003-0038-PWS-E,Prov. 5.c. ORDER

30 TAC Chapter 290, SubChapter D 290.46(u)

Description: Failure to plug wells #2 and #3, or submit test results for approval proving that the wells are in a non-deteriorated condition.

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
DAVID FENOGLIO D/B/A
SUNSET WATER SYSTEM;
RN102693579**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2011-0824-PWS-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. 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 David Fenoglio d/b/a Sunset Water System ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a public water system located at the northwest corner of the intersection of West Front Street and Cottage Grove Drive in Sunset, Montague County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 143 service connections, and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(66).
2. During an investigation conducted on March 22, 2011, a TCEQ Abilene Regional Office investigator documented that Respondent:
 - a. Failed to verify the accuracy of the manual disinfectant residual analyzer at least once every 30 days using chlorine solutions of known concentrations;
 - b. Failed to provide a total storage capacity of at least 200 gallons per connection. Specifically, the Facility serves 143 connections and is required to have a total storage capacity of 28,600 gallons. However, the Facility currently provides 26,400 gallons of storage capacity, which is an 8% deficiency;
 - c. Failed to provide roof openings on the ground storage tanks that are at least 30 inches in diameter. Specifically, the roof openings on all three of the Facility's ground storage tanks were less than 30 inches in diameter;
 - d. Failed to keep on file and make available for review copies of well completion data. Specifically, the well completion data for Well Nos. 1 and 3 did not include cement bonding logs or other documentation adequate to ensure complete sealing of the annular space between the casing and the drill hole; and

- e. Failed to plug abandoned wells or submit test results proving that the wells are in a non-deteriorated condition. Specifically, the raw water sampling had been conducted, but the records were inadequate to demonstrate that the samples had been taken from Well Nos. 2 and 3.
3. Respondent received notice of the violations on or about May 13, 2011.
4. 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 David Fenoglio d/b/a Sunset Water System" (the "EDPRP") in the TCEQ Chief Clerk's office on November 1, 2011.
5. By letter dated November 1, 2011, 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 November 4, 2011, as evidenced by the signature on the card.
6. 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. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to verify the accuracy of the manual disinfectant residual analyzer at least once every 30 days using chlorine solutions of known concentrations, in violation of 30 TEX. ADMIN. CODE § 290.46(s)(2)(C)(i).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to provide a total storage capacity of at least 200 gallons per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(ii) and TCEQ Agreed Order Docket No. 2007-1711-PWS-E, Ordering Provision No. 2.e.i.
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to provide roof openings on the ground storage tanks that are at least 30 inches in diameter, in violation of 30 TEX. ADMIN. CODE § 290.43(c)(3) and TCEQ Agreed Order Docket No. 2007-1711-PWS-E, Ordering Provision No. 2.c.i.
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to keep on file and make available for review copies of well completion data, in violation of 30 TEX. ADMIN. CODE § 290.46(n)(3) and TCEQ Agreed Order Docket No. 2007-1711-PWS-E, Ordering Provision No. 2.c.ii.

6. As evidenced by Finding of Fact No. 2.e., Respondent failed to plug abandoned wells or submit test results proving that the wells are in a non-deteriorated condition, in violation of 30 TEX. ADMIN. CODE § 290.46(u) and TCEQ Agreed Order Docket No. 2007-1711-PWS-E, Ordering Provision No. 2.e.ii.
7. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).
8. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 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.
9. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
10. An administrative penalty in the amount of four thousand two hundred thirty-eight dollars (\$4,238.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049.
11. 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 four thousand two hundred thirty-eight dollars (\$4,238.00) 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: David Fenoglio d/b/a Sunset Water System; Docket No. 2011-0824-PWS-E" to:

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

3. Respondent shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Order, Respondent shall begin verifying the accuracy of the manual disinfectant residual analyzer at least once every 30 days using chlorine solutions of known concentrations, in accordance with 30 TEX. ADMIN. CODE § 290.46 (Conclusion of Law No. 2);
 - b. Within 45 days after the effective date of this Order, Respondent shall submit written certification as described in Ordering Provision No. 3.g., below, to demonstrate compliance with Ordering Provision No. 3.a.
 - c. Within 60 days after the effective date of this Order, Respondent shall:
 - i. Begin keeping on file and make available for review copies of well completion data, including but not limited to cement bonding logs or other documentation adequate to ensure complete sealing of the annular space between the casing and the drill hole for Well Nos. 1 and 3, in accordance with of 30 TEX. ADMIN. CODE § 290.46 (Conclusion of Law No. 5); and
 - ii. Submit test results proving that Well Nos. 2 and 3 are in a non-deteriorated condition, in accordance with of 30 TEX. ADMIN. CODE § 290.46 (Conclusion of Law No. 6).
 - d. Within 75 days after the effective date of this Order, Respondent shall submit written certification as described in Ordering Provision No. 3.g., below, to demonstrate compliance with Ordering Provision Nos. 3.c.i. and 3.c.ii.
 - e. Within 90 days after the effective date of this Order, Respondent shall:
 - i. Provide a total storage capacity of at least 200 gallons per connection, in accordance with of 30 TEX. ADMIN. CODE § 290.45 (Conclusion of Law No. 3); and
 - ii. Provide roof openings on the ground storage tanks that are at least 30 inches in diameter, in accordance with of 30 TEX. ADMIN. CODE § 290.43 (Conclusion of Law No. 4).
 - f. Within 105 days after the effective date of this Order, Respondent shall submit written certification as described in Ordering Provision No. 3.g., below, to demonstrate compliance with Ordering Provision No. 3.e.i. and 3.e.ii.
 - g. The certifications required by these Ordering Provisions 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 certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Cliff Moore, Water Section Manager
Abilene Regional Office
Texas Commission on Environmental Quality
1977 Industrial Blvd.
Abilene, TX 79602-7833

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 personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. 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.
7. 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.
8. 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.
9. 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 KARI L. GILBRETH

STATE OF TEXAS

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COUNTY OF TRAVIS

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"My name is Kari L. Gilbreth. 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 David Fenoglio d/b/a Sunset Water System" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on November 1, 2011.

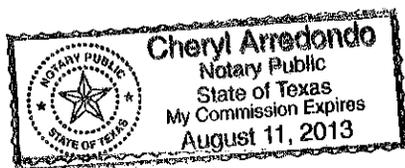
The EDPRP was mailed to Respondent's last known address on November 1, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on November 4, 2011, as evidenced by the signature on the card.

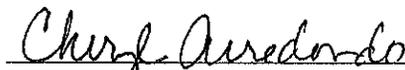
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."


Kari L. Gilbreth, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 9th day of December, A.D. 2011.




Notary Signature