

City of Del Rio

RN101264299

Docket No. 2011-1894-PWS-E

**Order Type:**

Default Order

**Findings Order Justification:**

N/A

**Media:**

PWS

**Small Business:**

N/A

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

Bayview Drive, Del Rio, Val Verde County

**Type of Operation:**

Owns and operates a 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:** May 11, 2012**Comments Received:** None**Penalty Information****Total Penalty Assessed:** \$317**Total Paid to General Revenue:** \$0**Total Due to General Revenue:** \$317**Compliance History Classifications:**

Person/CN – Average  
Site/RN – N/A

**Major Source:** Yes**Statutory Limit Adjustment:** N/A**Applicable Penalty Policy:** September 2002

**City of Del Rio**  
**RN101264299**  
**Docket No. 2011-1894-PWS-E**

**Investigation Information**

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** February 10-11, 2011; September 23, 2011  
**Date(s) of NOV(s):** February 28, 2011  
**Date(s) of NOE(s):** September 30, 2011

**Violation Information**

Failed to provide copies of well completion data [30 TEX. ADMIN. CODE §§ 290.41(c)(3)(A) and 290.46(n)(3)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**  
N/A

**Technical Requirements:**

1. Within 90 days, submit as-built well completion data for the well at the Facility for review and approval.
2. Within 105 days, submit written certification to demonstrate compliance with Technical Requirement No. 1.
3. Respond completely and adequately to all requests for information concerning the as-built well completion data within 15 days after the date of such requests, or by any other deadline specified in writing by TCEQ.
4. Within 180 days, obtain approval from the TCEQ of the as-built well completion data for the well at the Facility.
5. Within 195 days, submit written certification to demonstrate compliance with Technical Requirement No. 4.

**Litigation Information**

**Date Petition(s) Filed:** February 17, 2012  
**Date(s) Green Card(s) Signed:** February 21, 2012  
**Date(s) Answer(s) Filed:** N/A

**Contact Information**

**TCEQ Attorneys:** Peipey Tang, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Scott Humphrey, Public Interest Counsel, (512) 239-6363

**TCEQ Enforcement Coordinator:** Epifanio Villareal, Water Enforcement Section, (361) 825-3425

**TCEQ Regional Contact:** Rose Luna-Pirtle, Laredo Regional Office, (956) 753-4052

**Respondent:** The Honorable Robert Fernandez, Mayor of Del Rio, 109 West Broadway Street, Del Rio, Texas 78840

**Respondent's Attorney:** Suzanne West, City of Del Rio Attorney, 109 West Broadway Street, Del Rio, Texas 78840



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	3-Oct-2011	<b>Screening</b>	5-Oct-2011	<b>EPA Due</b>	
	<b>PCW</b>	6-Jan-2012				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	City of Del Rio
<b>Reg. Ent. Ref. No.</b>	RN101264299
<b>Facility/Site Region</b>	16-Laredo
<b>Major/Minor Source</b>	Major

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	42752	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-1894-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>	Epifanio Villarreal
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$250
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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.

<b>Compliance History</b>	27.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$67
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**Notes** Enhancement for one NOV with same/similar violations, one dissimilar NOV, and one order with denial of liability.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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**Notes** The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$410
Approx. Cost of Compliance	\$5,000

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$317
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

<b>Final Penalty Amount</b>	\$317
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$317
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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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.

<b>PAYABLE PENALTY</b>	\$317
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**Screening Date** 5-Oct-2011

**Docket No.** 2011-1894-PWS-E

**PCW**

**Respondent** City of Del Rio

*Policy Revision 2 (September 2002)*

**Case ID No.** 42752

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101264299

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Epifanio Villarreal

### Compliance History Worksheet

**>> Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	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)** 27%

**>> Repeat Violator (Subtotal 3)**

N/A

**Adjustment Percentage (Subtotal 3)** 0%

**>> Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

**>> Compliance History Summary**

**Compliance History Notes**

Enhancement for one NOV with same/similar violations, one dissimilar NOV, and one order with denial of liability.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 27%

Screening Date 5-Oct-2011

Docket No. 2011-1894-PWS-E

PCW

Respondent City of Del Rio

Policy Revision 2 (September 2002)

Case ID No. 42752

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101264299

Media [Statute] Public Water Supply

Enf. Coordinator Epifanio Villarreal

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.41(c)(3)(A) and 290.46(n)(3)

Violation Description Failed to provide copies of well completion data. Specifically, at the time of the investigation, it was documented that no documentation of well completion records was available for review.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			25%

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

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1 12 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$250

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 \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$410

Violation Final Penalty Total \$317

This violation Final Assessed Penalty (adjusted for limits) \$317

## Economic Benefit Worksheet

**Respondent** City of Del Rio  
**Case ID No.** 42752  
**Req. Ent. Reference No.** RN101264299  
**Media** Public Water Supply  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$5,000	10-Feb-2011	1-Oct-2012	1.64	\$410	n/a	\$410
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 cost includes the estimated amount to create as-built well completion records, calculated from the date the violation was initially documented 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**

\$410



**Date:** 02/28/2011 (900301) CN6000756290

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.43(d)(3)

Description: Failure to provide facilities for maintaining the air-water-volume at the design water level and working pressure for the pressure tank. Failure to provide a device to readily determine air-water-volume for all pressure tanks greater than 1,000 gallon capacity.

Self Report? NO Classification: Moderate

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

Description: Failure to maintain copies of well completion data on file for as long as the well remains in service.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF DEL RIO;  
RN101264299**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2011-1894-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 City of Del Rio ("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 Bayview Drive in Del Rio, Val Verde County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 22 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 by a TCEQ Laredo Regional Office investigator on February 10 and 11, 2011, and a record review conducted on September 23, 2011, it was documented that Respondent failed to provide copies of well completion data.
3. Respondent received notice of the violation on or about October 5, 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 City of Del Rio" (the "EDPRP") in the TCEQ Chief Clerk's office on February 17, 2012.
5. By letter dated February 17, 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 February 21, 2012, 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, Respondent failed to provide copies of well completion data, in violation of 30 TEX. ADMIN. CODE §§ 290.41(c)(3)(A) and 290.46(n)(3).
3. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).
4. 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.
5. 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.
6. An administrative penalty in the amount of three hundred seventeen dollars (\$317.00) 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.
7. 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 three hundred seventeen dollars (\$317.00) 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: City of Del Rio; Docket No. 2011-1894-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 90 days after the effective date of this Order, Respondent shall submit as-built well completion data for the well at the Facility for review and approval, in accordance with 30 TEX. ADMIN. CODE § 290.41. The well completion data shall be submitted to:

Water Supply Division  
Utility Creation & Plan Review Team, MC 153  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- b. Within 105 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 3.f., below, to demonstrate compliance with Ordering Provision No. 3.a.
- c. Respondent shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the as-built well completion data within 15 days after the date of such requests, or by any other deadline specified in writing by TCEQ.
- d. Within 180 days after the effective date of this Order, Respondent shall obtain approval from the TCEQ of the as-built well completion data for the well at the Facility.
- e. Within 195 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 3.f., below, to demonstrate compliance with Ordering Provision No. 3.d.
- f. 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 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:

Rose Luna-Pirtle, Water Section Manager  
Laredo Regional Office  
Texas Commission on Environmental Quality  
707 East Calton Road, Suite 304  
Laredo, Texas 78041-3887

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

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For the Commission

**AFFIDAVIT OF PEIPEY TANG**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

"My name is Peipey Tang. 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 City of Del Rio" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on February 17, 2012.

The EDPRP was mailed to Respondent's last known address on February 17, 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 February 21, 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."

Peipey Tang  
Peipey Tang, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Peipey Tang, 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 13th day of April, A.D. 2012.

Margaret Jackson  
Notary Signature

