

## Henry M. Garza d/b/a Cielo Azul Ranch

RN101217792

Docket No. 2011-1281-PWS-E

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Three or more enforcement actions (5 NOVs, 1 order) over the prior five year period for the same violations.

**Media:**

PWS

**Small Business:**

Yes

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

Ranch-to-Market Road 32 near Wimberley, Hays 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:** June 22, 2012

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$2,892

**Total Paid to General Revenue:** \$192

**Total Due to General Revenue:** \$2,700

Payment Plan: 27 payments of \$100 each

**Compliance History Classifications:**

Person/CN – N/A

Site/RN – N/A

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2002

**Henry M. Garza d/b/a Cielo Azul Ranch**

RN101217792

Docket No. 2011-1281-PWS-E

***Investigation Information***

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** June 20, 2011  
**Date(s) of NOV(s):** See Compliance History – 5 related NOVs  
**Date(s) of NOE(s):** July 5, 2011

***Violation Information***

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

***Corrective Actions/Technical Requirements*****Corrective Action(s) Completed:**

None

**Technical Requirements:**

1. Within 30 days, update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified DLQORs.
2. Within 45 days, submit written certification demonstrating compliance with Technical Requirement No. 1.
3. Within 90 days, begin submitting DLQORs to the Executive Director each quarter by the tenth day of the month following the end of each quarter. This provision will be satisfied upon two consecutive quarters of compliant reporting.
4. Within 195 days, submit written certification demonstrating compliance with Technical Requirement No. 3.

***Litigation Information*****Date Petition(s) Filed:** March 5, 2012**Settlement Date:** May 16, 2012***Contact Information***

**TCEQ Attorneys:** Sharesa Y. Alexander, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Garrett Arthur, Public Interest Counsel, (512) 239-6363

**TCEQ Enforcement Coordinator:** Andrea Linson, Enforcement Division, (512) 239- 1482**TCEQ Regional Contact:** Barry Kalda, Austin Regional Office, (512) 339-2929**Respondent:** Henry Garza, Owner, Cielo Azul Ranch, P.O. BOX 1898, San Marcos, Texas 78667**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>	27-Jun-2011	<b>Screening</b>	5-Jul-2011	<b>EPA Due</b>	30-Jun-2009
	<b>PCW</b>	9-Aug-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Henry M. Garza dba Cielo Azul Ranch
<b>Reg. Ent. Ref. No.</b>	RN101217792
<b>Facility/Site Region</b>	11-Austin
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	42082	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-1281-PWS-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Andrea Linson
		<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>	\$1,600
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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>	53.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$848
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**Notes** Enhancement for five NOVs with same/similar violations, four NOVs with dissimilar violations, and one agreed final enforcement order containing a 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	\$449
Approx. Cost of Compliance	\$505

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$2,448
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	18.1%	<b>Adjustment</b>	\$444
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Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes** Enhancement for the recovery of avoided costs associated with violation no. 1.

<b>Final Penalty Amount</b>	\$2,892
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$2,892
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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** No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	\$2,892
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Screening Date 5-Jul-2011

Docket No. 2011-1281-PWS-E

PCW

Respondent Henry M. Garza dba Cielo Azul Ranch

Policy Revision 2 (September 2002)

Case ID No. 42082

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101217792

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson

### 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> )	5	25%
	Other written NOVs	4	8%
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)** 53%

#### >> Repeat Violator (Subtotal 3)

No

**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 for five NOVs with same/similar violations, four NOVs with dissimilar violations, and one agreed final enforcement order containing a denial of liability.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 53%

Screening Date 5-Jul-2011

Docket No. 2011-1281-PWS-E

PCW

Respondent Henry M. Garza dba Cielo Azul Ranch

Policy Revision 2 (September 2002)

Case ID No. 42082

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101217792

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson

Violation Number 1

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

Violation Description Failed to submit a Disinfectant Level Quarterly Operating Report ("DLQOR") to the Executive Director each quarter by the tenth day of the month following the end of each quarter. Specifically, at the time of the record review, it was documented that the Respondent did not submit DLQORs for the first quarter of 2007 through the fourth quarter of 2010.

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 16 1460 Number of violation days

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

Violation Base Penalty \$1,600

Sixteen quarterly events are recommended, calculated for the quarters in which the reports were not submitted.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$1,600

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$449

Violation Final Penalty Total \$2,892

This violation Final Assessed Penalty (adjusted for limits) \$2,892

## Economic Benefit Worksheet

**Respondent** Henry M. Garza dba Cielo Azul Ranch  
**Case ID No.** 42082  
**Req. Ent. Reference No.** RN101217792  
**Media** Public Water Supply  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$45	20-Jun-2011	15-Mar-2012	0.74	\$2	n/a	\$2
Training/Sampling	\$100	20-Jun-2011	15-Mar-2012	0.74	\$4	n/a	\$4
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost to update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the submittal of signed and certified quarterly DLQORs, calculated from the record review date 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]	\$360	10-Apr-2007	10-Jan-2011	4.67	\$84	\$360	\$444
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided costs include the estimated amount to prepare and submit sixteen quarters of DLQORs, calculated for the period in which the DLQORs were due.

Approx. Cost of Compliance

\$505

**TOTAL**

\$449

# Compliance History

Customer/Respondent/Owner-Operator:	CN600659882 GARZA, HENRY	Classification:	Rating:
Regulated Entity:	RN101217792 CIELO AZUL RANCH	Classification:	Site Rating:
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	1050034
	WATER LICENSING	LICENSE	1050034
	EDWARDS AQUIFER	REGISTRATION	11-04041401
Location:	ON RANCH-TO-MARKET ROAD 32, NEAR WIMBERLEY, HAYS COUNTY, TEXAS		
TCEQ Region:	REGION 11 - AUSTIN		
Date Compliance History Prepared:	July 05, 2011		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	July 05, 2006 to July 05, 2011		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:			
Name:	Andrea Linson	Phone:	(512) 239-1482

## 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? | Yes |
| 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: 03/19/2011 ADMINORDER 2010-0020-PWS-E**

- |                 |                                                                                                                                                                                                                                                                                  |
|-----------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Classification: | Minor                                                                                                                                                                                                                                                                            |
| Citation:       | 30 TAC Chapter 290, SubChapter D 290.46(f)(2)<br>30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(i)(III)<br>30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(iv)<br>30 TAC Chapter 290, SubChapter D 290.46(f)(3)(B)(v)<br>30 TAC Chapter 290, SubChapter D 290.46(f)(3)(D)(ii) |
| Description:    | Failure to provide records for the amount of chemicals used each week.                                                                                                                                                                                                           |
| Classification: | Minor                                                                                                                                                                                                                                                                            |
| Citation:       | 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(ii)(III)                                                                                                                                                                                                                        |
| Description:    | Failure to provide records for the amount of water treated each week.                                                                                                                                                                                                            |
| Classification: | Minor                                                                                                                                                                                                                                                                            |
| Citation:       | 30 TAC Chapter 290, SubChapter D 290.46(i)                                                                                                                                                                                                                                       |
| Description:    | Failure to provide a record of service agreement or plumbing ordinance for the water system.                                                                                                                                                                                     |
| Classification: | Minor                                                                                                                                                                                                                                                                            |
| Citation:       | 30 TAC Chapter 290, SubChapter D 290.46(l)                                                                                                                                                                                                                                       |
| Description:    | Failure to provide records of dead-end mains flushing.                                                                                                                                                                                                                           |
| Classification: | Minor                                                                                                                                                                                                                                                                            |
| Citation:       | 30 TAC Chapter 290, SubChapter F 290.121(a)<br>30 TAC Chapter 290, SubChapter F 290.121(b)                                                                                                                                                                                       |
| Description:    | Failure to maintain an up-to-date chemical and microbiological monitoring plan for the water system.                                                                                                                                                                             |
| Classification: | Major                                                                                                                                                                                                                                                                            |
| Citation:       | 30 TAC Chapter 290, SubChapter D 290.46(q)(1)                                                                                                                                                                                                                                    |
| Description:    | Failure to issue a Boil Water Notice within 24 hours of becoming aware of a water outage.                                                                                                                                                                                        |
| Classification: | Minor                                                                                                                                                                                                                                                                            |
| Citation:       | 30 TAC Chapter 290, SubChapter D 290.43(c)<br>30 TAC Chapter 290, SubChapter D 290.46(m)<br>30 TAC Chapter 290, SubChapter D 290.46(m)(6)                                                                                                                                        |
| Description:    | Failure to properly maintain the pump station located on Dara Lane.                                                                                                                                                                                                              |
| Classification: | Minor                                                                                                                                                                                                                                                                            |
| Citation:       | 30 TAC Chapter 290, SubChapter D 290.46(v)                                                                                                                                                                                                                                       |
| Description:    | Failure to securely install electrical wiring in compliance with local or national electrical code.                                                                                                                                                                              |

- 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	02/19/2008 (617778)	7	06/16/2011 (934671)
2	12/08/2009 (784946)	8	10/01/2009 (934689)
3	05/07/2010 (801005)	9	07/21/2009 (934697)
4	11/03/2009 (802150)	10	03/27/2009 (934702)
5	06/14/2010 (824283)	11	12/22/2010 (934708)
6	06/16/2011 (934343)	12	06/24/2011 (934955)

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

**Date: 02/20/2008 (617778)**

**CN603713983**

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(K)  
Description: Failure to properly seal the wellhead to prevent the possibility of contaminating the well water.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)  
Description: Failure to maintain an intruder-resistant fence around the well site.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(2)  
30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(i)(III)  
30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(iv)  
30 TAC Chapter 290, SubChapter D 290.46(f)(3)(B)(v)  
30 TAC Chapter 290, SubChapter D 290.46(f)(3)(D)(ii)  
Description: Failure to provide records for the amount of chemicals used each week.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(ii)(III)  
Description: Failure to provide records for the amount of water treated each week.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(i)  
Description: Failure to provide a record of service agreement or plumbing ordinance for the water system.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(l)  
Description: Failure to provide records of dead-end mains flushing.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)  
Description: Failure to provide annual tank inspections for each of the system's ground, elevated, and pressure tanks.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)  
30 TAC Chapter 290, SubChapter D 290.46(s)(1)  
Description: Failure to provide records of well meter calibration.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)  
30 TAC Chapter 290, SubChapter F 290.121(b)  
Description: Failure to maintain an up-to-date chemical and microbiological monitoring plan for the water system.

**Date: 01/14/2009 (801005)**

**CN603713983**

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter H 290.271(b)  
30 TAC Chapter 290, SubChapter H 290.274(a)  
Description: This system did not deliver the annual Consumer Confidence Report (CCR) for 2007 to its bill-paying customers.  
Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter H 290.274(c)  
Description: This system failed to deliver a copy and certification of delivery of the annual Consumer Confidence Report (CCR) for the 2007 CCR year to the TCEQ.

**Date: 03/27/2009 (934702)**

**CN603713983**

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

**Date: 07/21/2009 (934697)**

**CN603713983**

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

**Date: 10/01/2009 (934689)**

**CN603713983**

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

**Date: 11/03/2009 (802150)**

**CN603713983**

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter H 290.271(b)  
30 TAC Chapter 290, SubChapter H 290.274(a)  
Description: This system did not deliver the annual Consumer Confidence Report (CCR) for 2008 to its bill-paying customers.

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 290, SubChapter H 290.274(c)  
Description: This system failed to deliver a copy and certification of delivery of the annual Consumer Confidence Report (CCR) for the 2008 CCR year to the TCEQ.

**Date: 12/22/2010 (934708) CN603713983**

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter H 290.271(b)  
30 TAC Chapter 290, SubChapter H 290.274(a)  
Description: This system did not deliver the annual Consumer Confidence Report (CCR) for 2009 to its bill-paying customers.  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter H 290.274(c)  
Description: This system failed to deliver a copy and certification of delivery of the annual Consumer Confidence Report (CCR) for the 2009 CCR year to the TCEQ.

**Date: 06/16/2011 (934343) CN603713983**

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

**Date: 06/16/2011 (934671) CN603713983**

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

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

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
HENRY M. GARZA D/B/A  
CIELO AZUL RANCH;  
RN101217792**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2011-1281-PWS-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Henry M. Garza d/b/a Cielo Azul Ranch ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent presented this Agreed Order to the Commission.

Respondent understands that he has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon 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 on Ranch-to-Market Road 32 near Wimberley, Hays County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 26 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 a record review conducted on June 20, 2011, a TCEQ Central Office investigator documented that Respondent failed to submit a Disinfectant Level Quarterly Operating Report ("DLQOR") to the Executive Director each quarter by the tenth day of the month following the end of each quarter. Specifically, Respondent did not submit DLQORs for the first quarter of 2007 through the fourth quarter of 2010.
3. Respondent received notice of the violation on or about July 12, 2011.

### 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 submit a DLQOR to the Executive Director each quarter by the tenth day of the month following the end of each quarter, in violation of 30 TEX. ADMIN. CODE § 290.110(e)(4)(A) and (f)(3).
3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against 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.
4. An administrative penalty in the amount of two thousand eight hundred ninety-two dollars (\$2,892.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid one hundred ninety-two dollars (\$192.00) of the administrative penalty. The remaining amount of two thousand seven hundred dollars (\$2,700.00) of the administrative penalty shall be payable in twenty-seven (27) monthly payments of one hundred dollars (\$100.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

### ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 4, above, 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 Agreed Order resolve only the matters set forth by this Agreed Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Henry M. Garza d/b/a Cielo Azul Ranch, Docket No. 2011-1281-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

2. Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order, Respondent shall update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified DLQORs, in accordance with 30 TEX. ADMIN. CODE § 290.10.
- b. Within 45 days after the effective date of this Agreed Order, Respondent shall submit written certification, as described in Ordering Provision No. 2.e. below, to demonstrate compliance with Ordering Provision No. 2.a.
- c. Within 90 days after the effective date of this Agreed Order, Respondent shall begin submitting DLQORs to the Executive Director each quarter by the tenth day of the month following the end of each quarter, in accordance with 30 TEX. ADMIN. CODE § 290.110. The provision will be satisfied upon two consecutive quarters of compliant reporting. DLQORs shall be submitted to:  

DLQOR Coordinator  
Water Supply Division, MC 155  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3097
- d. Within 195 days after the effective date of this Agreed Order, Respondent shall submit written certification in accordance with Ordering Provision No. 2.e., below, to demonstrate compliance with Ordering Provision No. 2.c.
- e. 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:

Elston Johnson, Public Drinking Water Program, MC 155  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

3. All relief not expressly granted in this Agreed Order is denied.
4. The provisions of this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director.
6. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
8. 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.
9. 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.
10. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to 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

  
\_\_\_\_\_  
For the Executive Director

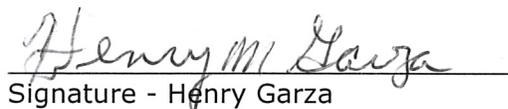
  
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Henry M. Garza d/b/a Cielo Azul Ranch, 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 in this Agreed 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.

  
Signature - Henry Garza

  
Date