

**Executive Summary – Enforcement Matter – Case No. 42305**

**Canan Operating, Inc.**

**RN106200694**

**Docket No. 2011-1453-WR-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Environmental receptors have been exposed to pollutants which exceed levels that are protective resulting in a fish kill.

**Media:**

WR

**Small Business:**

Yes

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

Diversion at Bellevue Lake, northwest of Bellevue on the south side of State Highway 287, Clay County

**Type of Operation:**

Oil and gas well drilling company that conducted a water diversion operation

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainants have expressed an interest in this matter but do not wish to speak at Agenda.

**Texas Register Publication Date:** March 2, 2012

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$4,850

**Amount Deferred for Expedited Settlement:** \$0

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

**Total Paid to General Revenue:** \$4,850

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - N/A

Site/RN - N/A

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

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**Canan Operating, Inc.**

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***Investigation Information***

**Complaint Date(s):** July 7, 2011

**Complaint Information:** Alleged dead and dying fish in Bellevue Lake due to the water being pumped out and being used for an oil well being drilled north of the City.

**Date(s) of Investigation:** July 8, 2011

**Date(s) of NOE(s):** August 11, 2011

***Violation Information***

Failed to obtain authorization prior to diverting, storing, impounding, taking, or using state water [TEX. WATER CODE §§ 11.081 and 11.121 and 30 TEX. ADMIN. CODE § 297.11].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Respondent ceased diverting water and removed all pumping equipment from the Site prior to the investigation.

**Technical Requirements:**

N/A

***Litigation Information***

**Date Petition(s) Filed:** N/A

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

**SOAH Referral Date:** N/A

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

**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Jeremy Escobar, Enforcement Division, Enforcement Team 3, MC R-14, (361) 825-3422; Debra Barber, Enforcement Division, MC 219, (512) 239-0412

**TCEQ SEP Coordinator:** N/A

**Respondent:** Pat Canan, President, Canan Operating, Inc., P.O. Box 4887, Wichita Falls, Texas 76308

**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>	15-Aug-2011	<b>Screening</b>	17-Aug-2011	<b>EPA Due</b>	
	<b>PCW</b>	17-Aug-2011				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Canan Operating, Inc.		
<b>Reg. Ent. Ref. No.</b>	RN106200694		
<b>Facility/Site Region</b>	3-Abilene	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	42305	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-1453-WR-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Water Rights	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Jeremy Escobar
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$5,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$2,500**

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

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

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

Notes: No adjustment for compliance history.

**Culpability** **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent do not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** **\$0**

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** **\$0**

Total EB Amounts	\$350
Approx. Cost of Compliance	\$350

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$2,500**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **94.0%** **Adjustment** **\$2,350**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost associated with the violation. An additional 80% enhancement was added due to the diversion occurring during extreme drought conditions (U.S. Drought Monitor Level D3).

**Final Penalty Amount** **\$4,850**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$4,850**

**DEFERRAL** **0.0%** Reduction **Adjustment** **\$0**

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

Notes: No deferral is recommended for Findings Orders.

**PAYABLE PENALTY** **\$4,850**

Screening Date 17-Aug-2011

Docket No. 2011-1453-WR-E

PCW

Respondent Canan Operating, Inc.

Policy Revision 2 (September 2002)

Case ID No. 42305

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106200694

Media [Statute] Water Rights

Enf. Coordinator Jeremy Escobar

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 0%

>> Repeat Violator (Subtotal 3)

N/A

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

>> Compliance History Person Classification (Subtotal 7)

N/A

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

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

Screening Date 17-Aug-2011

Docket No. 2011-1453-WR-E

PCW

Respondent Canan Operating, Inc.

Policy Revision 2 (September 2002)

Case ID No. 42305

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106200694

Media [Statute] Water Rights

Enf. Coordinator Jeremy Escobar

Violation Number 1

Rule Cite(s)

Tex. Water Code §§ 11.081 and 11.121, and 30 Tex. Admin. Code § 297.11

Violation Description

Failed to obtain authorization prior to diverting, storing, impounding, taking, or using state water, as documented during an investigation conducted on July 8, 2011. Specifically, it was documented that the Respondent diverted state water for drilling use without proper authorization which resulted in a water level drop that caused a fish kill. Approximately 700 fish were killed.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	X		
Potential			

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Diverting the water without authorization resulted in an adverse impact to environmental receptors.

Adjustment \$2,500

\$2,500

Violation Events

Number of Violation Events 1

1 Number of violation days

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

Violation Base Penalty \$2,500

One daily 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 \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$350

Violation Final Penalty Total \$4,850

This violation Final Assessed Penalty (adjusted for limits) \$4,850

## Economic Benefit Worksheet

**Respondent** Canan Operating, Inc.  
**Case ID No.** 42305  
**Reg. Ent. Reference No.** RN106200694  
**Media** Water Rights  
**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
<small>No commas or \$</small>							

### 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]	\$350	1-Jun-2011	30-Jun-2011	0.00	\$0	\$350	\$350
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to prepare an application (\$100) and submit filing and recording fees (\$250) for authorization to appropriate state water for the month of June 2011.

Approx. Cost of Compliance

\$350

**TOTAL**

\$350

## Compliance History

Customer/Respondent/Owner-Operator: CN603942657 CANAN OPERATING INC Classification: Rating:  
Regulated Entity: RN106200694 DIVERSION AT BELLEVUE LAKE Classification: Site Rating:  
ID Number(s): WATER QUALITY NON PERMITTED ID NUMBER R03106200694  
Location: northwest of the City of Bellevue on the south side of State Highway 287, Clay County, Texas  
TCEQ Region: REGION 03 - ABILENE  
Date Compliance History Prepared: August 30, 2011  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: August 10, 2006 to August 10, 2011  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Jeremy Escobar Phone: 825-3422

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
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
- 6.

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
N/A
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CANAN OPERATING, INC.  
RN106200694**

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

**AGREED ORDER  
DOCKET NO. 2011-1453-WR-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality (“the Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Canan Operating, Inc. (“the Respondent”) under the authority of TEX. WATER CODE ch. 11. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that they have 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, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement 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 is binding upon the Respondent.

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

**I. FINDINGS OF FACT**

1. The Respondent is an oil and gas well drilling company that conducted a water diversion operation at Bellevue Lake northwest of Bellevue on the south side of State Highway 287 in Clay County, Texas (the “Site”).

2. The Site adjoins, is contiguous with or surrounds state water as defined in TEX. WATER CODE § 11.021 and 30 TEX. ADMIN. CODE § 297.1(50).
3. During an investigation on July 8, 2011, TCEQ staff determined that the Respondent diverted state water for drilling use without proper authorization which resulted in a water level drop that caused a fish kill. Approximately 700 fish were killed.
4. The Respondent received notice of the violation on August 14, 2011.
5. The Executive Director recognizes that the Respondent ceased diverting water and removed all pumping equipment from the Site prior to the investigation.

## **II. CONCLUSIONS OF LAW**

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 11 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to obtain authorization prior to diverting, storing, impounding, taking, or using state water, in violation of TEX. WATER CODE §§ 11.081 and 11.121 and 30 TEX. ADMIN. CODE § 297.11.
3. Pursuant to TEX. WATER CODE § 11.0842, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code 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 Four Thousand Eight Hundred Fifty Dollars (\$4,850) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 11.0842(c). The Respondent has paid the Four Thousand Eight Hundred Fifty Dollar (\$4,850) administrative penalty.

## **III. ORDERING PROVISIONS**

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

1. The Respondent is assessed an administrative penalty in the amount of Four Thousand Eight Hundred Fifty Dollars (\$4,850) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here.

Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Canan Operating, Inc., Docket No. 2011-1453-WR-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
3. 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 the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
4. 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.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

7. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*Penny Kuehn*  
For the Executive Director

6/18/12  
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Canan Operating, Inc. I am authorized to agree to the attached Agreed Order on behalf of Canan Operating, Inc., and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Canan Operating, Inc. waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

*Pat Canan*  
Signature

5.15.12  
Date

PAT CANAN  
Name (Printed or typed)  
Authorized Representative of  
Canan Operating, Inc.

PRESIDENT  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.