

Lake Whitney Resorts, LLC
RN105215651
Docket No. 2012-0022-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Indifference to legal duty based on violation of a previous order.

Media:

PWS

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

255 Suncountry Drive, Whitney, Hill 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:	November 23, 2012
---	-------------------

Comments Received:	None
---------------------------	------

Penalty Information

Total Penalty Assessed:	\$11,827
--------------------------------	----------

Total Paid to General Revenue:	\$452
---------------------------------------	-------

Total Due to General Revenue:	\$11,375
--------------------------------------	----------

Payment Plan: 35 payments of \$325 each	
---	--

SEP Conditional Offset:	N/A
--------------------------------	-----

Compliance History Classifications:

Person/CN – Average	
Site/RN – N/A	

Major Source:	No
----------------------	----

Statutory Limit Adjustment:	None
------------------------------------	------

Applicable Penalty Policy:	September 2002
-----------------------------------	----------------

Investigation Information

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

Date(s) of Investigation:	September 29, 2011
----------------------------------	--------------------

Date(s) of NOV(s):	April 6, 2010
---------------------------	---------------

Date(s) of NOE(s):	December 9, 2011
---------------------------	------------------

Lake Whitney Resorts, LLC
RN105215651
Docket No. 2012-0022-PWS-E

Violation Information

1. Failed to provide a purchase water contract that authorizes a maximum hourly purchase rate to meet a minimum production capacity of 2.0 gallons per minute (“gpm”) per connection, or provide at least 1,000 gpm and be able to meet peak hourly demands, whichever is less [30 TEX. ADMIN. CODE § 290.45(f)(1) and (f)(5), and TCEQ Agreed Order Docket No. 2008-1942-MLM-E, Ordering Provision No. 2.d.].
2. Failed to provide an up-to-date map of the distribution system [30 TEX. ADMIN. CODE § 290.46(n)(2)].
3. Failed to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted [30 TEX. ADMIN. CODE § 290.46(i)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

On October 12, 2011:

1. Submitted a distribution map of the piping system; and
2. Submitted a service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted.

Technical Requirements:

1. Within 180 days, provide a water purchase contract that authorizes an hourly purchase rate to meet a service pump capacity of 2.0 gpm per connection, or provide at least 1,000 gpm and be able to meet peak hourly demands, whichever is less.
2. Within 195 days, submit written certification to demonstrate compliance

Litigation Information

Date Petition(s) Filed: June 21, 2012

Date Answer(s) Filed: August 2, 2012

SOAH Referral Date: September 7, 2012

Hearing Date(s):

Preliminary hearing: November 1, 2012 (scheduled)

Evidentiary hearing: N/A

Settlement Date: October 24, 2012

Contact Information

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

TCEQ Enforcement Coordinator: Epi Villarreal, Enforcement Division, (361) 825-3100

TCEQ Regional Contact: Frank Burluson, Waco Regional Office, (254) 751-0335

Respondent: Paul S. Bissing, Director, Lake Whitney Resorts, LLC, P.O. Box 1577, Whitney, Texas 76692

Respondent's Attorney: Heidi Inman Stoffer, Wray, Willet & Stoffer, P.L.L.C., 200A North Rogers Street, Waxahachie, Texas 75165



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	12-Dec-2011	Screening	15-Dec-2011	EPA Due	
	PCW	15-Dec-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	Lake Whitney Resorts, LLC		
Reg. Ent. Ref. No.	RN105215651		
Facility/Site Region	9-Waco	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36946	No. of Violations	1
Docket No.	2012-0022-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Epifanio Villarreal
		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** **\$7,750**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	51.0% Enhancement	Subtotals 2, 3, & 7	\$3,952
Notes	Enhancement for one NOV with same/similar violations, three dissimilar NOVs and two agreed orders with denial of liability.		
Culpability	No 0.0% Enhancement	Subtotal 4	\$0
Notes	The Respondent does 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	\$1,256	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$5,000		

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$11,702**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$11,702**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$11,702**

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

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

Notes

No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$11,702**

Screening Date 15-Dec-2011

Docket No. 2012-0022-PWS-E

PCW

Respondent Lake Whitney Resorts, LLC

Policy Revision 2 (September 2002)

Case ID No. 36946

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105215651

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	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	2	40%
	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) 51%

>> 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, three dissimilar NOVs and two agreed orders with denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 51%

Screening Date	15-Dec-2011	Docket No.	2012-0022-PWS-E	PCW
Respondent	Lake Whitney Resorts, LLC			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	36946			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN105215651			
Media [Statute]	Public Water Supply			
Enf. Coordinator	Epifanio Villarreal			

Violation Number

Rule Cite(s) 30 Tex. Admin. Code § 290.45(f)(1) and (f)(5), and TCEQ Agreed Order Docket No. 2008-1942-MLM-E, Ordering Provision No. 2.d.

Violation Description Failed to provide a purchase water contract that authorizes a maximum hourly purchase rate to meet a minimum production capacity of 2.0 gallons per minute ("gpm") per connection or provide at least 1,000 gpm and be able to meet peak hourly demands, whichever is less. Specifically, at the time of the investigation conducted on September 29, 2011, it was documented that the water purchase contract between the Respondent and Hilco United Services (Cedar Creek Water Supply Corporation) (Pressure Plane No. 2) provided a maximum of 27.3 gpm while the required capacity is 274 gpm, which is a 90% deficiency. In addition, it was documented that the water purchase contract between the Respondent and Hill County Water Supply Corporation (Pressure Plane No. 1) provided a maximum of 20 gpm, while the required capacity is 152 gpm which is a 86.8% deficiency.

Base Penalty

>> **Environmental, Property and Human Health Matrix**

OR	Harm			
	Major	Moderate	Minor	
	Actual	Potential		Percent <input type="text" value="25%"/>
	x			

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent <input type="text" value="0%"/>
Matrix Notes	Failure to have a water purchase contract cannot ensure that customers are provided with an adequate supply of water. As a result, customers could be exposed to a significant amount of contaminants that exceed levels protective of human health.				

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	x
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input type="text"/>	

Violation Base Penalty

Thirty-one monthly events are recommended from the effective date of TCEQ Agreed Order Docket No. 2008-1942-MLM-E, June 1, 2009, to the date of screening, December 15, 2011.

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	x	(mark with x)

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Lake Whitney Resorts, LLC
Case ID No. 36946
Reg. Ent. Reference No. RN105215651
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	\$5,000	1-Jun-2009	1-Jan-2013	3.59	\$60	\$1,196	\$1,256
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 cost includes the estimated amount to obtain one or more purchase water contracts to meet the necessary authorized purchase rate of 2.0 gpm per connection for service pump capacity, calculated from the effective date of TCEQ Agreed Order Docket No. 2008-1942-MLM-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 \$1,256



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

DATES	Assigned	12-Dec-2011	Screening	15-Dec-2011	EPA Due	
	PCW	15-Dec-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	Lake Whitney Resorts, LLC		
Reg. Ent. Ref. No.	RN105215651		
Facility/Site Region	9-Waco	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36946	No. of Violations	2
Docket No.	2012-0022-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Epifanio Villarreal
		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	\$75
---	-------------------	------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	51.0% Enhancement	Subtotals 2, 3, & 7	\$38
Notes	Enhancement for one NOV with same/similar violations, three dissimilar NOVs and two agreed orders with denial of liability.		
Culpability	No 0.0% Enhancement	Subtotal 4	\$0
Notes	The Respondent does 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	\$1	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$270		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$113
-----------------------------	-----------------------	-------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	------	-------------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
	Final Penalty Amount \$113

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$125
-----------------------------------	-------------------------------	-------

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

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

Notes	No deferral is recommended for Findings Orders.
--------------	---

PAYABLE PENALTY	\$125
------------------------	-------

Screening Date 15-Dec-2011

Docket No. 2012-0022-PWS-E

PCW

Respondent Lake Whitney Resorts, LLC

Policy Revision 3 (September 2011)

Case ID No. 36946

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN105215651

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	3	6%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	2	40%
	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) 51%

>> 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, three dissimilar NOVs and two agreed orders with denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 51%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 51%

Screening Date	15-Dec-2011	Docket No.	2012-0022-PWS-E	PCW
Respondent	Lake Whitney Resorts, LLC			<i>Policy Revision 3 (September 2011)</i>
Case ID No.	36946			<i>PCW Revision August 3, 2011</i>
Reg. Ent. Reference No.	RN105215651			
Media [Statute]	Public Water Supply			
Enf. Coordinator	Epifanio Villarreal			

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> **Environmental, Property and Human Health Matrix**

OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="0.0%"/>

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	Percent <input type="text" value="2.5%"/>
Matrix Notes	<input type="text" value="30% to 70% of the rule requirement was not met."/>				

Adjustment

Violation Events

Number of Violation Events Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

Notes

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Lake Whitney Resorts, LLC
Case ID No. 36946
Reg. Ent. Reference No. RN105215651
Media Violation No. Public Water Supply
 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				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)	\$90	29-Sep-2011	12-Oct-2011	0.04	\$0	n/a	\$0

Notes for DELAYED costs The delayed cost includes the estimated amount to update the distribution map, calculated from the date of the investigation to the 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	\$90	TOTAL	\$0
-----------------------------------	------	--------------	-----

Screening Date	15-Dec-2011	Docket No.	2012-0022-PWS-E	PCW
Respondent	Lake Whitney Resorts, LLC			<i>Policy Revision 3 (September 2011)</i>
Case ID No.	36946			<i>PCW Revision August 3, 2011</i>
Reg. Ent. Reference No.	RN105215651			
Media [Statute]	Public Water Supply			
Enf. Coordinator	Epifanio Villarreal			

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> **Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5.0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="text" value="x"/>

Violation Base Penalty

Good Faith Efforts to Comply

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

Notes

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent Lake Whitney Resorts, LLC
Case ID No. 36946
Reg. Ent. Reference No. RN105215651
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)	\$180	29-Sep-2011	12-Oct-2011	0.04	\$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

The delayed cost includes the estimated amount to adopt an adequate plumbing ordinance or service agreement containing all the necessary restrictions and terms, calculated from the date of the investigation to the 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 \$180

TOTAL \$0

Compliance History

Customer/Respondent/Owner-Operator: CN603182981 Lake Whitney Resorts, LLC Classification: AVERAGE Rating: 2.40
Regulated Entity: RN105215651 LAKE WHITNEY RV & GOLF Classification: Site Rating:
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1090075
Location: 255 SUNCOUNTRY DRIVE , WHITNEY, HILL COUNTY, TEXAS
TCEQ Region: REGION 09 - WACO
Date Compliance History Prepared: December 15, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: December 15, 2006 to December 15, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Epi Villarreal Phone: 361-825-3425

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: 07/03/2008

ADMINORDER 2007-2005-PWS-E

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.39(m)

Description: Failed to provide written notification to the Commission of the startup of a new public water system.

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.39(e)(1)

5A THSC Chapter 341, SubChapter A 341.035(c)

Description: Failed to submit engineering reports prior to activating a new public water system.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.44(d)

30 TAC Chapter 290, SubChapter D 290.46(r)

Description: Failed to operate the system to maintain a minimum pressure of 35 pounds per square inch ("psi") at all points within the distribution network at flow rates of at least 1.5 gallons per minute ("gpm") per connection and a minimum pressure of 20 psi during emergencies such as fire fighting.

Effective Date: 06/01/2009

ADMINORDER 2008-1942-MLM-E

Classification: Minor

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

5A THSC Chapter 341, SubChapter A 341.033(a)

Description: Failed to operate the Facility under the direct supervision of a water works operator who holds a minimum of a Class "D" license.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.45(f)(1)

30 TAC Chapter 290, SubChapter D 290.45(f)(4)

30 TAC Chapter 290, SubChapter D 290.45(f)(5)

Description: Failed to provide a purchase water contract in order to properly evaluate the Facility's production, storage, service pump or pressure maintenance capacity.

Classification: Minor

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

Description: Failed to provide an up-to-date map of the distribution system.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(4)(A)

Description: Failed to monitor the disinfectant residual at representative locations throughout the distribution system at least once every seven days.

Classification: Minor

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

30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(iv)

Description: Failed to provide Facility records to Commission personnel at the time of the investigation.

Classification: Minor

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

Description: Failed to maintain a supply of calcium hypochlorite disinfectant on hand for use when making repairs, setting meters, and disinfecting new mains prior to placing them in service.

Classification: Minor

Citation: 30 TAC Chapter 288, SubChapter B 288.20(a)

30 TAC Chapter 288, SubChapter C 288.30(5)(B)

Description: Failed to submit a Drought Contingency Plan which includes all elements for municipal use by a retail public water supplier.

Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)
30 TAC Chapter 290, SubChapter F 290.121(b)(1)
Description: Failed to make available for Commission review a complete up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements.

Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(l)
Description: Failed to compile and maintain a plant operations manual for operator review and reference.

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	08/03/2007	(568723)	6	11/10/2009	(780122)
2	12/07/2007	(598787)	7	02/05/2010	(786272)
3	08/15/2007	(645693)	8	04/07/2010	(788539)
4	12/08/2008	(706745)	9	12/05/2011	(956413)
5	02/23/2009	(722865)			

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

Date: 05/15/2007 (537109) CN603182981

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.39(m)

Description: Failed to provide written notification to the Commission of the startup of a new public water system.

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.39(e)(1)

5A THSC Chapter 341, SubChapter A 341.035(c)

Description: Failed to submit engineering reports prior to activating a new public water system.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.44(d)

30 TAC Chapter 290, SubChapter D 290.46(r)

Description: Failed to operate the system to maintain a minimum pressure of 35 pounds per square inch ("psi") at all points within the distribution network at flow rates of at least 1.5 gallons per minute ("gpm") per connection and a minimum pressure of 20 psi during emergencies such as fire fighting.

Date: 12/10/2008 (704813) CN603182981

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.44(d)

30 TAC Chapter 290, SubChapter D 290.46(r)

Description: Failure to design and maintain a water distribution system to provide at all times a minimum pressure of 35 pounds per square inch (psi). All public water systems shall be operated to provide a minimum pressure of 35 psi throughout the distribution system under normal operating conditions.

Date: 11/18/2009 (780122) CN603182981

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.44(e)(1)

Description: Failure to properly install potable water distribution lines.

s/s Date: 04/06/2010 (788539) CN603182981

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.45(f)(1)

30 TAC Chapter 290, SubChapter D 290.45(f)(4)

30 TAC Chapter 290, SubChapter D 290.45(f)(5)

Description: Failed to provide a purchase water contract in order to properly evaluate the Facility's production, storage, service pump or pressure maintenance capacity.

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
LAKE WHITNEY RESORTS, LLC;
RN105215651**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2012-0022-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 Lake Whitney Resorts, LLC ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Heidi Inman Stoffer of the law firm Wray, Willett & Stoffer, P.L.L.C., presented this Agreed Order to the Commission.

Respondent understands that it 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 at 255 Suncountry Drive in Whitney, Hill County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 213 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 September 29, 2011, a TCEQ Waco Regional Office investigator documented that Respondent:
 - a. Failed to provide a purchase water contract that authorizes a maximum hourly purchase rate to meet a minimum production capacity of 2.0 gallons per minute ("gpm") per connection, or provide at least 1,000 gpm and be able to meet peak hourly demands, whichever is less. Specifically, the water purchase contract between Respondent and Hilco United Services (Cedar Creek Water Supply Corporation) (Pressure Plane No. 2) provided a maximum of 27.3 gpm while the required capacity is 274 gpm, which is a 90% deficiency. In addition, the water purchase contract between Respondent and Hill County Water Supply Corporation

(Pressure Plane No. 1) provided a maximum of 20 gpm, while the required capacity is 152 gpm, which is an 86.8% deficiency;

- b. Failed to provide an up-to-date map of the distribution system. Specifically, the distribution map did not include all of the water system piping; and
 - c. Failed to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted. Specifically, there was no adopted plumbing code or service agreement.
3. Respondent received notice of the violations on or about December 14, 2011.
 4. The Executive Director recognizes that Respondent implemented the following corrective measures at the Facility:
 - a. Submitted a distribution map of the piping system on October 12, 2011 (Conclusion of Law No. 3); and
 - b. Submitted a service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted on October 12, 2011 (Conclusion of Law No. 4).

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 provide a purchase water contract that authorizes a maximum hourly purchase rate to meet a minimum production capacity of 2.0 gpm per connection, or provide at least 1,000 gpm and be able to meet peak hourly demands, whichever is less, in violation of 30 TEX. ADMIN. CODE § 290.45(f)(1) and (f)(5), and TCEQ Agreed Order Docket No. 2008-1942-MLM-E, Ordering Provision No. 2.d.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to provide an up-to-date map of the distribution system, in violation of 30 TEX. ADMIN. CODE § 290.46(n)(2).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted, in violation of 30 TEX. ADMIN. CODE § 290.46(i).
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 eleven thousand eight hundred twenty-seven dollars (\$11,827.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049. Respondent paid four hundred fifty-two dollars (\$452.00) of the administrative penalty. The remaining amount of eleven thousand three hundred seventy-five dollars (\$11,375.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of three hundred twenty-five dollars (\$325.00) 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. 6, 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: Lake Whitney Resorts, LLC, Docket No. 2012-0022-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 180 days after the effective date of this Agreed Order, Respondent shall provide a water purchase contract that authorizes an hourly purchase rate to meet a service pump capacity of 2.0 gpm per connection, or provide at least 1,000 gpm and be able to meet peak hourly demands, whichever is less, in accordance with 30 TEX. ADMIN. CODE § 290.45;
 - b. Within 195 days after the effective date of this Agreed Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provision No. 2.a. The certification 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 certification 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. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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.
7. 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.
8. 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.
9. 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

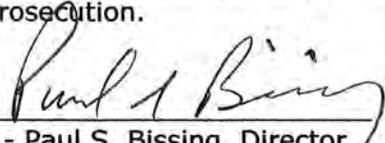
12/17/12
Date

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 Lake Whitney Resorts, LLC, 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 - Paul S. Bissing, Director
Lake Whitney Resorts, LLC

10/24/12
Date