

Executive Summary – Enforcement Matter – Case No. 46793

City of Marlin

RN102886892

Docket No. 2013-0877-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

Media:

PWS

Small Business:

No

Location(s) Where Violation(s) Occurred:

City of Marlin, 433 Farm-to-Market Road 147, Falls County

Type of Operation:

Public water supply

Other Significant Matters:

Additional Pending Enforcement Actions: Yes docket number: 2013-1162-PWS-E

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: August 30, 2013

Comments Received: No

Penalty Information

Total Penalty Assessed: \$555

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$555

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - High

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

Executive Summary – Enforcement Matter – Case No. 46793

City of Marlin

RN102886892

Docket No. 2013-0877-PWS-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: April 8, 2013

Date(s) of NOE(s): May 1, 2013

Violation Information

Failed to comply with the maximum contaminant level("MCL") of 0.060 mg/L for total haloacetic acids ("HAA5"), based on the running annual average [30 TEX. ADMIN. CODE §290.113(f)(5) and TEX. HEALTH & SAFETY CODE §341.0315(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Respondent shall undertake the following technical requirements:

- a. Within 365 days, return to compliance with the running annual average MCL for HAA5; and
- b. Within 380 days, submit written certification include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision 2.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: Sam Keller, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-2678; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: Honorable Elizabeth Nelson, Mayor, City of Marlin, P.O. Box 980, Marlin, Texas 76661

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	6-May-2013	Screening	7-May-2013	EPA Due	30-Jun-2013
	PCW	8-May-2013				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Marlin				
Reg. Ent. Ref. No.	RN102886892				
Facility/Site Region	9-Waco	Major/Minor Source	Major		

CASE INFORMATION

Enf./Case ID No.	46793	No. of Violations	1	
Docket No.	2013-0877-PWS-E	Order Type	Findings	
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes	
Multi-Media		Enf. Coordinator	Sam Keller	
		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	\$300
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	85.0% Enhancement	Subtotals 2, 3, & 7	\$255
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Notes: Enhancement for three NOVs with same/similar violations, one order with a denial of liability, and two orders without a denial of liability.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$788
 Approx. Cost of Compliance: \$5,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$555
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$555

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$555
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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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	\$555
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Screening Date 7-May-2013

Docket No. 2013-0877-PWS-E

PCW

Respondent City of Marlin

Policy Revision 3 (September 2011)

Case ID No. 46793

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102886892

Media [Statute] Public Water Supply

Enf. Coordinator Sam Keller

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>)	3	15%
	Other written NOVs	0	0%
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	2	50%
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) 85%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for three NOVs with same/similar violations, one order with a denial of liability, and two orders without a denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 85%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 85%

Screening Date 7-May-2013

Docket No. 2013-0877-PWS-E

PCW

Respondent City of Marlin

Policy Revision 3 (September 2011)

Case ID No. 46793

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102886892

Media [Statute] Public Water Supply

Enf. Coordinator Sam Keller

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.113(f)(5) and Tex. Health & Safety Code § 341.0315(c)

Violation Description Failed to comply with the maximum contaminant level ("MCL") of 0.060 milligrams per liter ("mg/L") for total haloacetic acids ("HAA5"), based on the running annual average. Specifically, the running annual average concentrations of HAA5 were 0.062 mg/L for the third quarter of 2012, 0.066 mg/L for the fourth quarter of 2012, and 0.074 mg/L for the first quarter of 2013.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		X		30.0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

Matrix Notes Exceeding the MCL for HAA5 caused the persons served by the Facility to be exposed to significant amounts of contaminants which do not exceed levels protective of human health.

Adjustment \$700

\$300

Violation Events

Number of Violation Events 1 Number of violation days 273

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	X
single event	

mark only one with an x

Violation Base Penalty \$300

One annual 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 \$300

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$788

Violation Final Penalty Total \$555

This violation Final Assessed Penalty (adjusted for limits) \$555

Economic Benefit Worksheet

Respondent City of Marlin
Case ID No. 46793
Reg. Ent. Reference No. RN102886892
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)	\$5,000	30-Sep-2012	31-Dec-2014	2.25	\$38	\$751	\$788
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs include the estimated amount necessary to implement an alternative method of disinfection, calculated from the last day of the first quarter of non-compliance 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

\$788



Compliance History Report

PUBLISHED Compliance History Report for CN600506604, RN102886892, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator:	CN600506604, City of Marlin	Classification:	SATISFACTORY	Rating:	6.52
Regulated Entity:	RN102886892, CITY OF MARLIN	Classification:	HIGH	Rating:	0.00
Complexity Points:	4	Repeat Violator:	NO		
CH Group:	08 - Sewage Treatment Facilities				
Location:	433 FARM-TO-MARKET ROAD 147, FALLS COUNTY, TEXAS				
TCEQ Region:	REGION 09 - WACO				
ID Number(s):					
PUBLIC WATER SYSTEM/SUPPLY REGISTRATION	0730002	WASTEWATER PERMIT	WQ0010110003		
WASTEWATER EPA ID	TX0124621				
Compliance History Period:	September 01, 2007 to August 31, 2012	Rating Year:	2012	Rating Date:	09/01/2012
Date Compliance History Report Prepared:	May 16, 2013				
Agency Decision Requiring Compliance History:	Enforcement				
Component Period Selected:	May 06, 2008 to May 06, 2013				
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.					
Name:	Sam Keller			Phone:	(512) 239-2678

Site and Owner/Operator History:

- | | |
|--|-----|
| 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 for #2, who is the current owner/operator? | N/A |
| 4) If YES for #2, who was/were the prior owner(s)/operator(s)? | N/A |
| 5) If YES, when did the change(s) in owner or operator occur? | N/A |

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

- | | | |
|---|---|---|
| 1 | Effective Date: 12/18/2009 | ADMINORDER 2005-2035-PWS-E (Findings Order-Agreed Order Without Denial) |
| | Classification: Moderate | |
| | Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(5) | |
| | Rqmt Prov: Docket No. 2003-0215-MLM-E; No.3.c.ii. ORDER | |
| | Description: Failure to provide an operational flow measuring device to measure the raw water supplied to the plant, treated water used in backwashing the filters, and the backwash lagoon decant water. | |
| | Classification: Major | |
| | Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(1) | |
| | 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(A)(i) | |
| | 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(B)(ii) | |
| | 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(C) | |
| | 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(C)(i) | |
| | 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(C)(ii) | |
| | 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(C)(iii) | |
| | 30 TAC Chapter 290, SubChapter F 290.119 | |

Rqmt Prov: 2003-0215-MLM-E ORDER

Description: Failure to calibrate the following: i. rate-of-flow controllers at least once every 12 months; ii. bench top pH meter at least once a day or calibrate according to manufacturers specifications; and iii. a continuous disinfectant residual analyzers at least once in 90 days using chlorine solutions for known concentrat

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.44(d)(1)
30 TAC Chapter 290, SubChapter D 290.44(h)(1)(A)
30 TAC Chapter 290, SubChapter D 290.44(h)(1)(B)(i)
30 TAC Chapter 291, SubChapter F 291.93(5)

Rqmt Prov: 2003-0215-MLM-E; Provision No. 3.a.ii. ORDER

Description: Failed to provide, at any residence or establishment where an actual or potential contamination hazard exists, additional protection at the meter in the form of an air gap or back flow prevention assembly, and failed to have properly installed air releases in the distribution system.

Classification: Minor

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

Rqmt Prov: 30 Tex. Admin. Code §290.46(f)(2) PERMIT

Description: Failure to provide water system's operating records available for review during investigations.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(1)(B)

Rqmt Prov: 30 Tex. Admin. Code § 290.109(c)(1)(B) PERMIT

Description: Failure to monitor for microbial contamination at locations specified in the system's monitoring plan.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(e)(6)(C)

Rqmt Prov: 30 Tex. Admin. Code § 290.121 PERMIT

Description: Failure of a surface water treatment plant to have at least one Class "C" or higher surface water operator on duty at the plant when it is in operation or the plant must be provided with continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators.

Classification: Minor

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

Rqmt Prov: 30 Tex. Admin. Code §§290.43(e) & .46(m) PERMIT

Description: Failure to provide facility security by having all potable water storage tanks and pressure maintenance facilities installed in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates and to maintain plant facilities in a manner to ensure the reliab

Classification: Minor

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

Rqmt Prov: 2003-0215-MLM-E; Nos. 3.a.x. and 3.c.iii ORDER

Description: Failure to provide a water storage tank roof hatch that seals properly when closed.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(1)

Rqmt Prov: 2003-0215-MLM-E; Nos. 3.a.x., 3.a.xi ORDER

Description: Failure to properly screen the storage tank roof vent.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(4)

Rqmt Prov: 30 Tex. Admin. Code § 290.46(m)(4) PERMIT

Description: Failure to have all water treatment units, storage and pressure maintenance facilities, distribution system lines, and related appurtenances shall be maintained in a watertight condition and be free of excessive solids.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter F 290.121

Rqmt Prov: 30 Tex. Admin. Code § 290.121 PERMIT

Description: Failure to maintain an up-to-date chemical and microbiological monitoring plan.

Classification: Minor

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

Rqmt Prov: 2003-0215-MLM-E; Provision 3.a.vi. ORDER

Description: Failure to calibrate the raw water flow meter at least every twelve months.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(5)(C)

Rqmt Prov: 30 Tex. Admin. Code § 290.110(c)(5)(C) PERMIT

Description: Failure to monitor the disinfectant residual at representative locations in the distribution system.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(C)(ii)

Rqmt Prov: 30 Tex. Admin. Code § 290.110(c)(5)(C) PERMIT

Description: Failure to properly conduct and record the calibration of the continuous on-line disinfectant residual analyzer.

Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.44(d)(1)
Rqmt Prov: 2003-0215-MLM-E; Provision 3.a.ii. ORDER
Description: Failure to properly install all air release devices in the distribution system to preclude the possibility of submergence or possible entrance of contaminants.
Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(r)
Rqmt Prov: 2003-0215-MLM-E; Provision 3.a.iv. ORDER
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) at flow rates of at least 1.5 gallons per minute at each service outlet or connection.
Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.43(e)
Rqmt Prov: 2003-0215-MLM-E; Provision No. 3.c.iii. ORDER
Description: Failure to provide an intruder-resistant fence in order to protect the elevated tank.
Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(3)
Rqmt Prov: 2003-0215-MLM-E; Provision 3.a.xi. ORDER
Description: Failure to provide an overflow pipe with a cover that seals properly when closed.
Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(4)
Rqmt Prov: 2003-0215-MLM-E; Provision 3.a.xi. ORDER
Description: Failure to provide a proper liquid level indicator on all water storage tanks.
Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.41(e)(2)(C)
Rqmt Prov: 30 Tex. Admin. Code § 290.41(e)(2)(C) PERMIT
Description: Failure to establish regulations to govern the 200 foot restriction zone at the raw water intake.
Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.41(e)(2)(C)
Rqmt Prov: 30 TAC §§ 290.42(d)(13) & .42(f)(1)(C) PERMIT
Description: Failure to post signs recounting the restrictions at the raw water intake restriction zone.
Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(11)(D)(i)
Rqmt Prov: 2003-0215-MLM-E; Provision 3.c.ii. ORDER
Description: Failure to provide an operational rate-of-flow controller with rate of flow indication for each filter unit.
Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(13)
Rqmt Prov: 30 TAC §§ 290.42(d)(13) & .42(f)(1)(C) PERMIT
Description: Failure to properly identify all chemical feed lines at the surface water treatment plant.
Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(f)(1)(C)
Rqmt Prov: 30 TAC §§ 290.42(d)(13) & .42(f)(1)(C) PERMIT
Description: Failure to label all chemical day tanks.
Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)
Rqmt Prov: 2003-0215-MLM-E; Provision 3.a.xi. ORDER
Description: Failure to provide an overflow pipe for clearwell No. 1.
Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(2)(E)
Rqmt Prov: 2003-0215-MLM-E; Provision 3.c.ii. ORDER
Description: Failure to provide an air gap on the filter-to-waste connection.
Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(11)(E)(ii)
Rqmt Prov: 2003-0215-MLM-E; Provision 3.a.iv. ORDER
Description: Failure to provide each filter with an on-line turbidimeter.
Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.42(d)(11)(E)(v)
Rqmt Prov: 2003-0215-MLM-E; Provision 3.c.ii. ORDER
Description: Failure to provide each filter unit with a device to indicate loss of head through the filter.
Classification: Moderate
Citation: 2A TWC Chapter 7, SubChapter A 7.101

Description: Failure to comply with a provision of a Commission Order.

- 2 Effective Date: 12/16/2012 ADMINORDER 2012-1112-PWS-E (1660 Order-Agreed Order With Denial)
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
5A THSC Chapter 341, SubChapter A 341.0315(c)
Description: TTHM MCL 3Q2011 - The system violated the maximum contaminant level for trihalomethanes during the third quarter of 2011.
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
5A THSC Chapter 341, SubChapter A 341.0315(c)
Description: TTHM MCL 4Q2011 - The system violated the maximum contaminant level for trihalomethanes during the fourth quarter of 2011.
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.113(f)(4)
5A THSC Chapter 341, SubChapter A 341.0315(c)
Description: TTHM MCL 1Q2012 - The system violated the maximum contaminant level for trihalomethanes during the first quarter of 2012.
- 3 Effective Date: 05/02/2013 ADMINORDER 2012-2319-PWS-E (Findings Order-Agreed Order Without Denial)
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.44(h)(1)(A)
Description: Failure to provide a backflow prevention assembly at any residence or establishment where an actual or potential contamination hazard exists.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

Item 1	August 27, 2008	(701078)
Item 2	September 22, 2008	(718197)
Item 3	October 02, 2008	(718202)
Item 4	November 03, 2008	(718203)
Item 5	December 01, 2008	(733461)
Item 6	January 02, 2009	(733462)
Item 7	February 03, 2009	(756601)
Item 8	March 03, 2009	(756602)
Item 9	April 06, 2009	(756603)
Item 10	April 30, 2009	(773522)
Item 11	May 27, 2009	(773523)
Item 12	August 04, 2009	(820818)
Item 13	September 03, 2009	(820819)
Item 14	October 09, 2009	(820821)
Item 15	November 02, 2009	(820820)
Item 16	December 02, 2009	(820823)
Item 17	January 05, 2010	(820824)
Item 18	February 12, 2010	(820817)
Item 19	March 26, 2010	(836558)
Item 20	April 15, 2010	(836559)
Item 21	June 01, 2010	(848007)
Item 22	July 02, 2010	(862446)
Item 23	August 02, 2010	(869069)
Item 24	September 03, 2010	(875925)
Item 25	October 01, 2010	(883506)
Item 26	November 03, 2010	(889887)
Item 27	November 29, 2010	(931100)
Item 28	December 23, 2010	(931101)

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF MARLIN
RN102886892**

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

**AGREED ORDER
DOCKET NO. 2013-0877-PWS-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 the City of Marlin (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The 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, 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 are binding upon the Respondent.

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

I. FINDINGS OF FACT

1. The Respondent owns and operates a public water supply at 433 Farm-to-Market Road 147 in Falls County, Texas (the "Facility") that has 2,970 service connections and serves at least 25 people per day for at least 60 days per year.
2. During a record review conducted on April 8, 2013, TCEQ staff documented that the running annual average concentrations of total haloacetic acids ("HAA5") were 0.062 milligrams per liter ("mg/L") for the third quarter of 2012, 0.066 mg/L for the fourth quarter of 2012, and 0.074 mg/L for the first quarter of 2013.
3. The Respondent received notice of the violations on May 6, 2013.

II. CONCLUSIONS OF LAW

1. The 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 Findings of Fact No. 2, the Respondent failed to comply with the maximum contaminant level ("MCL") of 0.060 mg/L for HAA5, based on the running annual average, in violation of 30 TEX. ADMIN. CODE § 290.113(f)(5) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, 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 Five Hundred Fifty-Five Dollars (\$555) 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(b). The Respondent has paid the Five Hundred Fifty-Five Dollar (\$555) 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 Five Hundred Fifty-Five Dollars (\$555) 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: City of Marlin, Docket No. 2013-0877-PWS-E" to:

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

2. The Respondent shall undertake the following technical requirements:
 - a. Within 365 days after the effective date of this Agreed Order, return to compliance with the running annual average MCL for HAA5, in accordance with 30 TEX. ADMIN. CODE § 290.113; and
 - b. Within 380 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Public Drinking Water Section Manager
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. 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 Facility operations referenced in this Agreed Order.
4. 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. 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.
6. 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.
7. 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.
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. 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

Pam Rowen J
For the Executive Director

8/25/13
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of the City of Marlin. I am authorized to agree to the attached Agreed Order on behalf of the City of Marlin, 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, the City of Marlin 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.

William McDonald
Signature

7-9-2013
Date

William McDonald
Name (Printed or typed)
Authorized Representative of
City of Marlin

City Manager
Title

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