Executive Summary – Enforcement Matter – Case No. 44634
Cotulla Fish Hatchery, LLC
RN106201825
Docket No. 2012-1533-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:
Yes
Location(s) Where Violation(s) Occurred:
Cotulla Fish Hatchery & RV Park, 1531 South Main Street, La Salle County
Type of Operation:
Public water supply
Other Significant Matters:
Additional Pending Enforcement Actions: No
Past-Due Penalties: No
Other: N/A
Interested Third-Parties: None
Texas Register Publication Date: December 28, 2012
Comments Received: No

Penalty Information

Total Penalty Assessed: $1,863
Amount Deferred for Expedited Settlement: $0
Amount Deferred for Financial Inability to Pay: $0
Total Paid to General Revenue: $1,863
Total Due to General Revenue: $0
Payment Plan: N/A
SEP Conditional Offset: $0
Name of SEP: N/A
Compliance History Classifications:
Person/CN - Average
Site/RN - Average by Default
Major Source: No
Statutory Limit Adjustment: N/A
Applicable Penalty Policy: September 2011

Executive Summary – Enforcement Matter – Case No. 44634
Cotulla Fish Hatchery, LLC
RN106201825
Docket No. 2012-1533-PWS-E

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: June 25, 2012
Date(s) of NOE(s): July 5, 2012

Violation Information

1. Failed to collect routine distribution water samples for coliform analysis for the months of October 2011 through March 2012, and failed to provide public notice to the Facility's customers for the months of October 2011 through February 2012 [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(ii) and 290.122(c)(2)(B), and TEX. HEALTH & SAFETY CODE § 341.033(d)].

2. Failed to submit Disinfectant Level Quarterly Operating Reports ("DLQORs") to the Executive Director ("ED") each quarter by the tenth day of the month following the end of the quarter for the fourth quarter of 2011 and the first quarter of 2012 [30 TEX. ADMIN. CODE § 290.110(e)(4)(A) and (f)(3)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require Respondent to:

a. Within 10 days:

i. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to persons served by the Facility; and

ii. Begin complying with applicable coliform monitoring requirements, including the collection of all routine distribution samples when required, and providing water that meets the provisions regarding microbial contaminants. This provision will be satisfied upon six consecutive months of compliant monitoring and reporting at the Facility.

b. Within 30 days:

i. Submit written certification demonstrating compliance with Ordering Provision a.i.; and

ii. Update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified DLQORs.

c. Within 45 days, submit written certification demonstrating compliance with Ordering Provision b.ii.

d. Within 90 days, begin submitting DLQORs to the ED each quarter by the tenth day of the month following the end of each quarter. This provision will be satisfied upon two consecutive quarters of compliant reporting.

e. Within 195 days, submit written certification demonstrating compliance with Ordering Provision a.ii.

f. Within 285 days, submit written certification demonstrating compliance with Ordering Provision d.

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: Jim Fisher, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-2537; Debra Barber, Enforcement Division, MC 219, (512) 239-0412
TCEQ SEP Coordinator: N/A
Respondent: Lee R. Peters, Owner, COTULLA FISH HATCHER, LLC, P.O. Box 310, Cotulla, Texas 78014
Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011) — *PCW Revision August 3, 2011*

TCEQ

DATES **Assigned** 23-Jul-2012 **PCW** 1-Aug-2012 **Screening** 26-Jul-2012 **EPA Due** 30-Sep-2012

RESPONDENT/FACILITY INFORMATION

Respondent Cotulla Fish Hatchery, LLC
Reg. Ent. Ref. No. RN106201825
Facility/Site Region 16-Laredo **Major/Minor Source** Minor

CASE INFORMATION

Enf./Case ID No. 44634
Docket No. 2012-1533-PWS-E
Media Program(s) Public Water Supply
Multi-Media

No. of Violations 2
Order Type Findings
Government/Non-Profit No
Enf. Coordinator Jim Fisher
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*** **$1,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **52.0%** Enhancement — ***Subtotals 2, 3, & 7*** **$520**

Notes: Recommended enhancement for ten NOVs with the same/similar violations and one NOV with dissimilar violations.

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 — ***Subtotal 6*** **$0**

Total EB Amounts $348
Approx. Cost of Compliance $465

0.0% Enhancement*
**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — ***Final Subtotal*** **$1,520**

OTHER FACTORS AS JUSTICE MAY REQUIRE **22.6%** — ***Adjustment*** **$343**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided costs associated with violation nos. 1 and 2.

Final Penalty Amount **$1,863**

STATUTORY LIMIT ADJUSTMENT — ***Final Assessed Penalty*** **$1,863**

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 **$1,863**

Screening Date 26-Jul-2012 **Docket No.** 2012-1533-PWS-E **PCW**

Respondent Cotulla Fish Hatchery, LLC *Policy Revision 3 (September 2011)*

Case ID No. 44634 *PCW Revision August 3, 2011*

Reg. Ent. Reference No. RN106201825

Media [Statute] Public Water Supply

Enf. Coordinator Jim Fisher

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 (*number of NOVs meeting criteria*)	10	50%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	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 (*number of judgements or consent decrees meeting criteria*)	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 (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	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 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		Please Enter Yes or No	
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) 52%

>> Repeat Violator (Subtotal 3)

No ***Adjustment Percentage (Subtotal 3)*** 0%

>> Compliance History Person Classification (Subtotal 7)

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

>> Compliance History Summary

Compliance History Notes

Recommended enhancement for ten NOVs with the same/similar violations and one NOV with dissimilar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 52%

>> Final Compliance History Adjustment

Final Adjustment Percentage ****capped at 100%*** 52%

Screening Date 26-Jul-2012 **Docket No.** 2012-1533-PWS-E **PCW**

Respondent Cotulla Fish Hatchery, LLC *Policy Revision 3 (September 2011)*

Case ID No. 44634 *PCW Revision August 3, 2011*

Reg. Ent. Reference No. RN106201825

Media [Statute] Public Water Supply

Enf. Coordinator Jim Fisher

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(A)(ii) and 290.122(c)(2)(B), and Tex. Health & Safety Code § 341.033(d)

Violation Description Failed to conduct routine distribution water sampling for coliform analysis and failed to provide public notice to the Facility's customers of the Respondent's failure to conduct coliform sampling. Specifically, the Respondent failed to conduct routine sampling for coliform analysis for the months of October 2011 through March 2012, and failed to provide public notice to the Facility's customers for the months of October 2011 through February 2012.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm: Major	Moderate	Minor
	Actual			
	Potential	x		

Percent 15.0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes: Failure to perform routine coliform monitoring could result in persons served by the Facility being exposed to undetected contaminants, which would exceed levels protective of human health.

Adjustment $850

$150

Violation Events

Number of Violation Events: 6 — 151 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $900

Six monthly events are recommended, based on one event for each month the required samples were not collected.

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 $900

Economic Benefit (EB) for this violation

Estimated EB Amount $298

Statutory Limit Test

Violation Final Penalty Total $1,677

This violation Final Assessed Penalty (adjusted for limits) $1,677

Economic Benefit Worksheet

Respondent Cotulla Fish Hatchery, LLC
Case ID No. 44634
Reg. Ent. Reference No. RN106201825
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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)	$100	25-Jun-2012	28-Feb-2013	0.68	$3	n/a	$3
Notes for DELAYED costs	The delayed costs include the estimated amount to update the Facility's operational guidance and conduct employee training to ensure that all necessary public notices are submitted to the TCEQ in a timely manner, calculated from the record review date to the estimated date of compliance.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]	$150	1-Oct-2011	31-Mar-2012	1.42	$11	$150	$161
Other (as needed)	$125	1-Nov-2011	31-May-2012	1.50	$9	$125	$134
Notes for AVOIDED costs	The avoided costs include the estimated amount to collect routine distribution coliform samples ($25 x 6 samples) and provide public notification ($25 x 5 notifications) of the failure to sample, calculated for the months sampling was not conducted and the period when public notification should have been provided.						

Approx. Cost of Compliance $375

TOTAL $298

Screening Date 26-Jul-2012 **Docket No.** 2012-1533-PWS-E **PCW**

Respondent Cotulla Fish Hatchery, LLC *Policy Revision 3 (September 2011)*

Case ID No. 44634 *PCW Revision August 3, 2011*

Reg. Ent. Reference No. RN106201825

Media [Statute] Public Water Supply

Enf. Coordinator Jim Fisher

Violation Number 2

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

Violation Description Failed to submit Disinfectant Level Quarterly Operating Reports ("DLQORs") to the Executive Director each quarter by the tenth day of the month following the end of the quarter for the fourth quarter of 2011 and the first quarter of 2012.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm: Major	Moderate	Minor
	Actual			
	Potential			

Percent 0.0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

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

Adjustment $950

$50

Violation Events

Number of Violation Events: 2 — 182 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $100

Two quarterly events are recommended, one event for each quarter the required report was not submitted.

Good Faith Efforts to Comply

0.0% Reduction — $0

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

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

Violation Subtotal $100

Economic Benefit (EB) for this violation

Estimated EB Amount $49

Statutory Limit Test

Violation Final Penalty Total $186

This violation Final Assessed Penalty (adjusted for limits) $186

Economic Benefit Worksheet

Respondent Cotulla Fish Hatchery, LLC
Case ID No. 44634
Reg. Ent. Reference No. RN106201825
Media Public Water Supply
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or $						
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System	$45	25-Jun-2012	28-Feb-2013	0.68	$2	n/a	$2
Training/Sampling	$100	25-Jun-2012	28-Feb-2013	0.68	$3	n/a	$3
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 update the Facility's operational guidance and conduct employee training to ensure that all DLQORs are submitted to the TCEQ in a timely manner, calculated from the record review date to the estimated date of compliance.						
Avoided Costs	**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**						
Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]	$45	10-Jan-2012	10-Apr-2012	1.17	$3	$45	$48
Other (as needed)				0.00	$0	$0	$0
Notes for AVOIDED costs	The avoided cost includes the estimated amount to timely prepare and submit DLQORs ($22.50 per DLQOR x 2 DLQORs), calculated for the time frame in which the DLQORs were not submitted.						

Approx. Cost of Compliance $190

TOTAL $53

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603943192	Cotulla Fish Hatchery, LLC	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN106201825	COTULLA FISH HATCHERY & RV PARK	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY		REGISTRATION	1420009
Location:	1531 SOUTH MAIN STREET, LA SALLE COUNTY, TEXAS			
TCEQ Region:	REGION 16 - LAREDO			
Date Compliance History Prepared:	August 24, 2012			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	July 26, 2007 to July 26, 2012			

Date:

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

Name: Jim Fisher Phone: 239 - 2537

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. If **YES**, when did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2011 Repeat Violator: NO

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.)

1	06/28/2012	(1015257)
2	06/29/2012	(1015356)
3	06/29/2012	(1015372)
4	06/29/2012	(1015379)
5	06/29/2012	(1015406)
6	06/29/2012	(1015425)
7	06/29/2012	(1015437)
8	07/20/2012	(1015532)
9	08/15/2011	(948898)
10	02/03/2012	(982380)

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

Date 08/16/2011 (948898)

Self Report? NO Classification: Moderate

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

Description: Failure to submit planning materials for the public water system.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(A)

Description: Failure to submit well completion data before placing the well into service as a public water system.

Date: 02/29/2012 (1015257) CN603943192

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)
30 TAC Chapter 290, SubChapter F 290.109(f)(5)
30 TAC Chapter 290, SubChapter F 290.109(f)(7)

Description: TCR Routine Monitoring Violation 10/2011 - Failure to collect any routine monitoring sample.

Date: 02/29/2012 (1015372) CN603943192

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)
30 TAC Chapter 290, SubChapter F 290.109(f)(5)
30 TAC Chapter 290, SubChapter F 290.109(f)(7)

Description: TCR Routine Monitoring Violation 11/2011 - Failure to collect any routine monitoring sample.

Date: 03/15/2012 (1015379) CN603943192

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)
30 TAC Chapter 290, SubChapter F 290.109(f)(5)
30 TAC Chapter 290, SubChapter F 290.109(f)(7)

Description: TCR Routine Monitoring Violation 12/2011 - Failure to collect any routine monitoring sample.

Date: 03/15/2012 (1015356) CN603943192

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)
30 TAC Chapter 290, SubChapter F 290.122(f)

Description: OCT 2011 TCR Routine Monitoring PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct coliform monitoring for the month of 10/2011.

Date: 03/27/2012 (1015406) CN603943192

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)
30 TAC Chapter 290, SubChapter F 290.109(f)(5)
30 TAC Chapter 290, SubChapter F 290.109(f)(7)

Description: TCR Routine Monitoring Violation 01/2012 - Failure to collect any routine monitoring sample.

Date: 04/10/2012 (1015425) CN603943192

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)
30 TAC Chapter 290, SubChapter F 290.109(f)(5)
30 TAC Chapter 290, SubChapter F 290.109(f)(7)

Description: TCR Routine Monitoring Violation 02/2012 - Failure to collect any routine monitoring sample.

Date: 04/24/2012 (1015372) CN603943192

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)
30 TAC Chapter 290, SubChapter F 290.122(f)

Description: NOV/2011 TCR Routine Monitoring PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct coliform monitoring for the month of 11/2011.

Date: 05/07/2012 (1015437) CN603943192

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)
30 TAC Chapter 290, SubChapter F 290.109(f)(5)
30 TAC Chapter 290, SubChapter F 290.109(f)(7)

Description: TCR Routine Monitoring Violation 03/2012 - Failure to collect any routine monitoring sample.

Date: 06/14/2012 (1015379) CN603943192

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)

	30 TAC Chapter 290, SubChapter F 290.122(f)
Description:	DEC/2011 TCR Routine Monitoring PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct coliform monitoring for the month of 12/2011.

Date: 06/14/2012 (1015406) CN603943192

Self Report? NO Classification: Moderate

Citation:	30 TAC Chapter 290, SubChapter F 290.122(c)(2)
	30 TAC Chapter 290, SubChapter F 290.122(f)
Description:	JAN/2012 TCR Routine Monitoring PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct coliform monitoring for the month of 01/2012.

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 COTULLA FISH HATCHERY, LLC RN106201825	**§ § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2012-1533-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 COTULLA FISH HATCHERY, LLC ("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 1531 South Main Street in La Salle County, Texas (the "Facility") that has approximately 38 service connections and serves at least 25 people per day for at least 60 days per year.

2. During a record review conducted on June 25, 2012, TCEQ staff documented that the Respondent failed to conduct routine sampling for coliform analysis for the months of October 2011 through March 2012, and failed to provide public notice to the Facility's customers for the months of October 2011 through February 2012.

3. During a record review conducted on June 25, 2012, TCEQ staff documented that the Respondent failed to submit Disinfectant Level Quarterly Operating Reports ("DLQORs") to the Executive Director each quarter by the tenth day of the month following the end of the quarter for the fourth quarter of 2011 and the first quarter of 2012.

4. The Respondent received notice of the violations on July 11, 2012.

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 collect routine distribution water samples for coliform analysis for the months of October 2011 through March 2012, and failed to provide public notice to the Facility's customers for the months of October 2011 through February 2012, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(ii) and 290.122(c)(2)(B), and TEX. HEALTH & SAFETY CODE § 341.033(d).

3. As evidenced by Findings of Fact No. 3, the Respondent failed to submit DLQORs to the Executive Director each quarter by the tenth day of the month following the end of the quarter, in violation of 30 TEX. ADMIN. CODE § 290.110(e)(4)(A) and (f)(3).

4. 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.

5. An administrative penalty in the amount of One Thousand Eight Hundred Sixty-Three Dollars ($1,863) 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 One Thousand Eight Hundred Sixty-Three Dollar ($1,863) 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 One Thousand Eight Hundred Sixty-Three Dollars ($1,863) as set forth in Section II, Paragraph 5 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: COTULLA FISH HATCHERY, LLC, Docket No. 2012-1533-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 10 days after the effective date of this Agreed Order:

      i. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to persons served by the Facility, in accordance with 30 TEX. ADMIN. CODE § 290.122; and

      ii. Begin complying with applicable coliform monitoring requirements, including the collection of all routine distribution samples when required, and providing water that meets the provisions regarding microbial contaminants, in accordance with 30 TEX. ADMIN. CODE § 290.109. This provision will be satisfied upon six consecutive months of compliant monitoring and reporting at the Facility.

   b. Within 30 days after the effective date of this Agreed Order:

      i. Submit written certification as described in Ordering Provision No. 2.f. below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.i.; and

      ii. Update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified DLQORs, in accordance with 30 TEX. ADMIN. CODE § 290.110.

c. Within 45 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.f. below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.b.ii.

d. Within 90 days after the effective date of this Agreed Order, begin submitting DLQORs to the Executive Director each quarter by the tenth day of the month following the end of each quarter, in accordance with 30 TEX. ADMIN. CODE § 290.110. This provision will be satisfied upon two consecutive quarters of compliant reporting. DLQORs shall be submitted to:

DLQOR Coordinator
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

e. Within 195 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.f. below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.ii.

f. Within 285 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.d. 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

For the Executive Director

3/14/13
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of COTULLA FISH HATCHERY, LLC, I am authorized to agree to the attached Agreed Order on behalf of COTULLA FISH HATCHERY,LLC, 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, COTULLA FISH HATCHERY, LLC 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.

Signature

11/12/12
Date

Lee R. Peters
Name (Printed or typed)
Authorized Representative of
COTULLA FISH HATCHERY, LLC

Owner
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.