

Executive Summary – Enforcement Matter – Case No. 46062

City of Wheeler

RN102698313

Docket No. 2013-0184-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) and people or environmental receptors have been exposed to pollutants which exceed levels that are protective.

Media:

PWS

Small Business:

No

Location(s) Where Violation(s) Occurred:

Wheeler Municipal Water System, 115 East Texas Avenue, Wheeler, Wheeler 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: June 21, 2013

Comments Received: No

Penalty Information

Total Penalty Assessed: \$9,775

Amount Deferred for Expedited Settlement: \$9,775

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - High

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002 and September 2011

**Executive Summary – Enforcement Matter – Case No. 46062
City of Wheeler
RN102698313
Docket No. 2013-0184-PWS-E**

Investigation Information

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

Violation Information

Failed to comply with the acute maximum contaminant level ("MCL") of 10 milligrams per liter for nitrate [30 TEX. ADMIN. CODE § 290.106(f)(2) and TEX. HEALTH & SAFETY CODE § 341.031(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent gained approval from the TCEQ for a protocol to remove nitrates from the drinking water on April 10, 2013.

Technical Requirements:

The Order will require Respondent to:

- a. Within 180 days, submit an acceptable written plan, including a proposed schedule, to the Executive Director that provides for the completion of an alternate water source or treatment technology;
- b. Within 180 days, and on a semi-annual basis thereafter, submit progress reports. These reports shall include information regarding actions taken to provide water which meets the acute MCL for nitrate;
- c. Within 195 days, submit written certification demonstrating compliance with Ordering Provision a.;
- d. Within 1,095 days, return to compliance with the acute MCL for nitrate; and
- e. Within 1,110 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

Executive Summary – Enforcement Matter – Case No. 46062
City of Wheeler
RN102698313
Docket No. 2013-0184-PWS-E

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Katy Montgomery, Enforcement Division,
Enforcement Team 2, MC R-13, (210) 403-4016; Candy Garrett, Enforcement Division,
MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: The Honorable Bob McCain, Mayor, City of Wheeler, P.O. Box 98,
Wheeler, Texas 79096

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	10-Dec-2012	Screening	17-Dec-2012	EPA Due	30-Jun-2008
	PCW	19-Dec-2012				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Wheeler
Reg. Ent. Ref. No.	RN102698313
Facility/Site Region	1-Amarillo
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	46062	No. of Violations	1
Docket No.	2013-0184-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Katy Schumann
		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	\$7,000
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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	15.0% Enhancement	Subtotals 2, 3, & 7	\$1,050
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Notes	Enhancement for five NOV's with same/similar violations. Adjustment for High Performer Classification.		
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.			
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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	\$74,123	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$100,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,050
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Notes	Reduces or enhances the Final Subtotal by the indicated percentage.		
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Final Penalty Amount	\$8,050
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,050
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Notes	Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)		
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No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$8,050
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Screening Date 17-Dec-2012

Docket No. 2013-0184-PWS-E

PCW

Respondent City of Wheeler

Policy Revision 2 (September 2002)

Case ID No. 46062

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102698313

Media [Statute] Public Water Supply

Enf. Coordinator Katy Schumann

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	5	25%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 25%

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

N/A

Adjustment Percentage (Subtotal 3) 0%

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

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for five NOVs with same/similar violations. Adjustment for High Performer Classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 15%

Screening Date 17-Dec-2012

Docket No. 2013-0184-PWS-E

PCW

Respondent City of Wheeler

Policy Revision 2 (September 2002)

Case ID No. 46062

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102698313

Media [Statute] Public Water Supply

Enf. Coordinator Katy Schumann

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.106(f)(2) and Tex. Health & Safety Code § 341.031(a)

Violation Description

Failed to comply with the acute maximum contaminant level ("MCL") of 10 milligrams per liter ("mg/L") for nitrate. Specifically, at the time of the record review, it was documented that the single sample concentrations for nitrate were 11.6 mg/L for the fourth quarter of 2007, 12 mg/L for the first quarter of 2008, 12 mg/L for the second quarter of 2008, 12 mg/L for the third quarter of 2008, 13 mg/L for the fourth quarter of 2008, 13 mg/L for the first quarter of 2009, 13 mg/L for the second quarter of 2009, 13 mg/L for the fourth quarter of 2009, 14 mg/L for the first quarter of 2010, 15 mg/L for the second quarter of 2010, 15.7 mg/L for the third quarter of 2010, 14 mg/L for the fourth quarter of 2010, 14 mg/L for the first quarter of 2011, and 19 mg/L for the second quarter of 2011.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	x			50%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Exceeding the MCL for nitrate caused the customers of the Facility to be exposed to pollutants which exceeded levels protective of human health.

Adjustment \$500

\$500

Violation Events

Number of Violation Events 14 1002 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$7,000

Fourteen quarterly events are 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 \$7,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$74,123

Violation Final Penalty Total \$8,050

This violation Final Assessed Penalty (adjusted for limits) \$8,050

Economic Benefit Worksheet

Respondent City of Wheeler
Case ID No. 46062
Reg. Ent. Reference No. RN102698313
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)	\$100,000	31-Dec-2007	31-Jul-2018	10.59	\$3,530	\$70,594	\$74,123
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 investigate, identify, and implement the necessary corrective actions to return to compliance with the acute MCL for nitrates, 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 \$100,000

TOTAL \$74,123



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	10-Dec-2012	Screening	17-Dec-2012	EPA Due	30-Jun-2008
	PCW	17-Dec-2012				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Wheeler				
Reg. Ent. Ref. No.	RN102698313				
Facility/Site Region	1-Amarillo	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	46062	No. of Violations	1
Docket No.	2013-0184-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Katy Schumann
		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	\$1,500
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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	15.0% Enhancement	Subtotals 2, 3, & 7	\$225
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Notes: Enhancement for five NOVs with same/similar violations. Adjustment for High Performer Classification.

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	\$0
Approx. Cost of Compliance	\$0

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,725
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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	\$1,725
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,725
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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	\$1,725
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Screening Date 17-Dec-2012

Docket No. 2013-0184-PWS-E

PCW

Respondent City of Wheeler

Policy Revision 3 (September 2011)

Case ID No. 46062

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102698313

Media [Statute] Public Water Supply

Enf. Coordinator Katy Schumann

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	5	25%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 25%

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

N/A

Adjustment Percentage (Subtotal 3) 0%

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

High Performer

Adjustment Percentage (Subtotal 7) -10%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for five NOVs with same/similar violations. Adjustment for High Performer Classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 15%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 15%

Screening Date 17-Dec-2012

Docket No. 2013-0184-PWS-E

PCW

Respondent City of Wheeler

Policy Revision 3 (September 2011)

Case ID No. 46062

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102698313

Media [Statute] Public Water Supply

Enf. Coordinator Katy Schumann

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.106(f)(2) and Tex. Health & Safety Code § 341.031(a)

Violation Description Failed to comply with the acute maximum contaminant level ("MCL") of 10 milligrams per liter ("mg/L") for nitrate. Specifically, at the time of the record review, it was documented that the single sample concentrations for nitrate were 18 mg/L for the third quarter of 2011, 15 mg/L for the fourth quarter of 2011, 15 mg/L for the first quarter of 2012, 20 mg/L for the second quarter of 2012, and 21 mg/L for the third quarter of 2012.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent 30.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Exceeding the MCL for nitrate caused the customers of the Facility to be exposed to pollutants which exceeded levels protective of human health.

Adjustment \$700

\$300

Violation Events

Number of Violation Events 5

457 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,500

Five quarterly events are 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 \$1,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$1,725

This violation Final Assessed Penalty (adjusted for limits) \$1,725

Economic Benefit Worksheet

Respondent City of Wheeler
Case ID No. 46062
Reg. Ent. Reference No. RN102698313
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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 of compliance are captured in the Economic Benefit for Violation No. 1 on the Revision 2 PCW.

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

\$0

TOTAL

\$0

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN601098163, RN102698313, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN601098163, City of Wheeler **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN102698313, WHEELER MUNICIPAL WATER SYSTEM **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: 115 EAST TEXAS AVENUE, WHEELER, WHEELER COUNTY, TEXAS

TCEQ Region: REGION 01 - AMARILLO

ID Number(s):
PUBLIC WATER SYSTEM/SUPPLY REGISTRATION **WATER LICENSING LICENSE** 2420002
2420002

Compliance History Period: September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

Date Compliance History Report Prepared: December 17, 2012

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: December 17, 2007 to December 17, 2012

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Katy Schumann **Phone:** (512) 239-2602

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:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1	December 08, 2010	(879452)
Item 2	September 05, 2012	(1021981)

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1	Date:	12/27/2011	(1049954)	CN601098163
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Self Report? NO Classification: Major
Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(2)
Description: NO3 AMCL 3Q2011 - This system exceeded the MCL of 10 mg/L for nitrate (as nitrogen) with a sample result of 18 mg/L collected on 09/20/2011.

2 Date: 03/28/2012 (1049954) CN601098163
Self Report? NO Classification: Major
Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(2)
Description: NO3 AMCL 4Q2011 - This system exceeded the MCL of 10 mg/L for nitrate (as nitrogen) with a sample result of 15 mg/L collected on 11/15/2011.

3 Date: 05/04/2012 (1049954) CN601098163
Self Report? NO Classification: Major
Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(2)
Description: NO3 AMCL 1Q2012 - This system exceeded the MCL of 10 mg/L for nitrate (as nitrogen) with a sample result of 15 mg/L collected on 03/20/2012.

4 Date: 08/14/2012 (1049954) CN601098163
Self Report? NO Classification: Major
Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(2)
Description: NO3 AMCL 2Q2012 - This system exceeded the MCL of 10 mg/L for nitrate (as nitrogen) with a sample result of 20 mg/L collected on 06/12/2012.

5 Date: 09/25/2012 (1049954) CN601098163
Self Report? NO Classification: Major
Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(2)
Description: NO3 AMCL 3Q2012 - This system exceeded the MCL of 10 mg/L for nitrate (as nitrogen) with a sample result of 21 mg/L collected on 09/04/2012.

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
CITY OF WHEELER
RN102698313

§ BEFORE THE
§ TEXAS COMMISSION ON
§ ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2013-0184-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 Wheeler (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 115 East Texas Avenue in Wheeler, Wheeler County, Texas (the "Facility") that has approximately 714 service connections and serves at least 25 people per day for at least 60 days per year.

2. During a record review conducted on December 5, 2012, TCEQ staff documented that the single sample concentrations for nitrate were 11.6 milligrams per liter ("mg/L") for the fourth quarter of 2007, 12 mg/L for the first quarter of 2008, 12 mg/L for the second quarter of 2008, 12 mg/L for the third quarter of 2008, 13 mg/L for the fourth quarter of 2008, 13 mg/L for the first quarter of 2009, 13 mg/L for the second quarter of 2009, 13 mg/L for the fourth quarter of 2009, 14 mg/L for the for the first quarter of 2010, 15 mg/L for the second quarter of 2010, 15.7 mg/L for the third quarter of 2010, 14 mg/L for the fourth quarter of 2010, 14 mg/L for the first quarter of 2011, and 19 mg/L for the second quarter of 2011, 18 mg/L for the third quarter of 2011, 15 mg/L for the fourth quarter of 2011, 15 mg/L for the first quarter of 2012, 20 mg/L for the second quarter of 2012, and 21 mg/L for the third quarter of 2012.
3. The Respondent received notice of the violations on December 14, 2012.
4. The Executive Director recognizes that the Respondent gained approval from the TCEQ for a protocol to remove nitrates from the drinking water on April 10, 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 acute maximum contaminant level ("MCL") of 10 mg/L for nitrate, in violation of 30 TEX. ADMIN. CODE § 290.106(f)(2) and TEX. HEALTH & SAFETY CODE § 341.031(a).
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 Nine Thousand Seven Hundred Seventy-Five Dollars (\$9,775) 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). Nine Thousand Seven Hundred Seventy-Five Dollars (\$9,775) of the administrative penalty is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order and shall be waived only upon full compliance with all the terms and conditions contained in this Agreed Order. If the Respondent fails to timely and satisfactorily comply with any requirement contained in this Agreed Order, the deferred amount of the administrative penalty shall become immediately due and payable without demand or notice, and the Executive Director may request the Respondent to pay all or part of the deferred 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 Nine Thousand Seven Hundred Seventy-Five Dollars (\$9,775) 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 Wheeler, Docket No. 2013-0184-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 180 days after the effective date of this Agreed Order, submit an acceptable written plan, including a proposed schedule, to the Executive Director that provides for the completion of an alternate water source or treatment technology to the addresses listed in Ordering Provision No. 2.e.;
 - b. Within 180 days after the effective date of this Agreed Order, and on a semi-annual basis thereafter, submit progress reports to the addresses listed in Ordering Provision No. 2.e. below. These reports shall include information regarding actions taken to provide water which meets the acute MCL for nitrate;
 - c. Within 195 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.e. below to demonstrate compliance with Ordering Provision No. 2.a.;
 - d. Within 1,095 days after the effective date of this Agreed Order, return to compliance with the acute MCL for nitrate, in accordance with 30 TEX. ADMIN. CODE § 290.106; and
 - e. Within 1,110 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

and to:

Technical Review and Oversight Team
Water Supply Division, MC 159
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 Sanchez
For the Executive Director

8/19/13
Date

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

Bob McCain
Signature

5.14.13
Date

BOB McCAIN
Name (Printed or typed)
Authorized Representative of
City of Wheeler

MAYOR CITY OF WHEELER
Title