

**Executive Summary – Enforcement Matter – Case No. 48479**  
**MILBERGER LANDSCAPING, INC.**  
**RN106799042**  
**Docket No. 2014-0455-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:**

Milberger Landscape Nursery, 3920 North Loop 1604 East, San Antonio, Bexar 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:** July 11, 2014

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$2,046

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

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

**Total Paid to General Revenue:** \$2,046

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

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Unclassified

Site/RN - Unclassified

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2011

***Investigation Information***

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

**Complaint Information:** N/A

**Date(s) of Investigation:** March 5, 2014 to March 14, 2014

**Date(s) of NOE(s):** March 14, 2014

**Executive Summary – Enforcement Matter – Case No. 48479  
MILBERGER LANDSCAPING, INC.  
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***Violation Information***

Failed to collect routine distribution water samples for coliform analysis for the months of July 2013 through January 2014 and failed to provide public notification regarding the failure to sample for the months of July 2013 through October 2013 [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(A) and TEX. HEALTH & SAFETY CODE § 341.033(d)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

a. Within 30 days:

i. Begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants. This provision will be satisfied upon six consecutive months of compliant monitoring and reporting; and

ii. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to persons served by the Facility, including but not limited to providing public notification regarding the failure to collect routine distribution water samples.

b. Within 45 days, submit written certification to demonstrate compliance with Ordering Provision a.ii.

c. Within 225 days, submit written certification to demonstrate compliance with Ordering Provision a.i.

***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. 48479**  
**MILBERGER LANDSCAPING, INC.**  
**RN106799042**  
**Docket No. 2014-0455-PWS-E**

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Yuliya Dunaway, Enforcement Division,  
Enforcement Team 2, MC R-13, (210) 403-4077; Candy Garrett, Enforcement Division,  
MC 219, (512) 239-1456

**TCEQ SEP Coordinator:** N/A

**Respondent:** Dann Whitford, Comptroller, MILBERGER LANDSCAPING, INC., 3920  
North Loop 1604 East, San Antonio, Texas 78247

Boyd Cook, President, MILBERGER LANDSCAPING, INC., 3920 North Loop 1604  
East, San Antonio, Texas 78247

**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

|              |                 |             |                  |             |                |             |
|--------------|-----------------|-------------|------------------|-------------|----------------|-------------|
| <b>DATES</b> | <b>Assigned</b> | 17-Mar-2014 | <b>Screening</b> | 25-Mar-2014 | <b>EPA Due</b> | 30-Jun-2014 |
|              | <b>PCW</b>      | 25-Mar-2014 |                  |             |                |             |

## RESPONDENT/FACILITY INFORMATION

|                             |                             |                           |       |  |  |
|-----------------------------|-----------------------------|---------------------------|-------|--|--|
| <b>Respondent</b>           | MILBERGER LANDSCAPING, INC. |                           |       |  |  |
| <b>Reg. Ent. Ref. No.</b>   | RN106799042                 |                           |       |  |  |
| <b>Facility/Site Region</b> | 13-San Antonio              | <b>Major/Minor Source</b> | Minor |  |  |

## CASE INFORMATION

|  |                     |                              |                    |
|--|---------------------|------------------------------|--------------------|
| <b>Enf./Case ID No.</b>                | 48479               | <b>No. of Violations</b>     | 1                  |
| <b>Docket No.</b>                      | 2014-0455-PWS-E     | <b>Order Type</b>            | Findings           |
| <b>Media Program(s)</b>                | Public Water Supply | <b>Government/Non-Profit</b> | No                 |
| <b>Multi-Media</b>                     |                     | <b>Enf. Coordinator</b>      | Yuliya Dunaway     |
|  |                     | <b>EC's Team</b>             | Enforcement Team 2 |
| <b>Admin. Penalty \$ Limit Minimum</b> | \$50                | <b>Maximum</b>               | \$1,000            |

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$1,050**

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

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

**Compliance History** **75.0%** Enhancement **Subtotals 2, 3, & 7** **\$787**

Notes: Enhancement for 11 NOVs with the same/similar violations and one agreed order containing a denial of liability.

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

Notes: The Respondent does not meet the culpability criteria.

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

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

Total EB Amounts: \$213  
 Approx. Cost of Compliance: \$295  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$1,837**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **11.4%** **Adjustment** **\$209**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement recommended for the recovery of avoided costs of compliance for Violation No. 1.

**Final Penalty Amount** **\$2,046**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$2,046**

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

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

Notes: No deferral is recommended for Findings Orders.

**PAYABLE PENALTY** **\$2,046**

**Screening Date** 25-Mar-2014

**Docket No.** 2014-0455-PWS-E

**PCW**

**Respondent** MILBERGER LANDSCAPING, INC.

Policy Revision 3 (September 2011)

**Case ID No.** 48479

PCW Revision August 3, 2011

**Reg. Ent. Reference No.** RN106799042

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Yuliya Dunaway

**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> )  | 11                | 55%     |
|                               | 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 | 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 judgments 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)** 75%

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

No

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

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

Unclassified

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

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for 11 NOVs with the same/similar violations and one agreed order containing a denial of liability.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 75%

>> **Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 75%

Screening Date 25-Mar-2014

Docket No. 2014-0455-PWS-E

PCW

Respondent MILBERGER LANDSCAPING, INC.

Policy Revision 3 (September 2011)

Case ID No. 48479

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106799042

Media [Statute] Public Water Supply

Enf. Coordinator Yuliya Dunaway

Violation Number 1

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

Violation Description Failed to collect routine distribution water samples for coliform analysis for the months of July 2013 through January 2014 and failed to provide public notification regarding the failure to sample for the months of July 2013 through October 2013.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

| Release   | Harm  |          |       | Percent |
|-----------|-------|----------|-------|---------|
|           | Major | Moderate | Minor |         |
| Actual    |       |          |       | 15.0%   |
| Potential | x     |          |       |         |

>> Programmatic Matrix

| Falsification | Major | Moderate | Minor | Percent |
|---------------|-------|----------|-------|---------|
|               |       |          |       | 0.0%    |

Matrix Notes

Failure to collect routine distribution water samples and provide public notification could expose persons served by the Facility to contaminants which would exceed levels protective of human health.

Adjustment \$850

\$150

Violation Events

Number of Violation Events 7 Number of violation days 210

|              |   |
|--------------|---|
| daily        |   |
| weekly       |   |
| monthly      | x |
| quarterly    |   |
| semiannual   |   |
| annual       |   |
| single event |   |

mark only one with an x

Violation Base Penalty \$1,050

Seven monthly events are recommended (one for each monitoring period).

Good Faith Efforts to Comply

0.0% Reduction

\$0

|               | Reduction  |                              |
|---------------|------------|------------------------------|
|               | Before NOV | NOV to EDRP/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 \$1,050

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$213

Violation Final Penalty Total \$2,047

This violation Final Assessed Penalty (adjusted for limits) \$2,047

# Economic Benefit Worksheet

**Respondent** MILBERGER LANDSCAPING, INC.  
**Case ID No.** 48479  
**Req. Ent. Reference No.** RN106799042  
**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    | \$100 | 5-Mar-2014 | 21-Oct-2014 | 0.63 | \$3 | n/a | \$3 |
| 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 to develop and implement procedures and conduct employee training to ensure that all necessary public notifications are provided in a timely manner, calculated from the date of the record review 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]    | \$175 | 1-Jul-2013 | 31-Jan-2014 | 1.50 | \$13 | \$175 | \$188 |
| Other (as needed)             | \$20  | 1-Aug-2013 | 31-Jan-2014 | 1.42 | \$1  | \$20  | \$21  |

**Notes for AVOIDED costs**

The avoided costs include the estimated amount (\$25 per sample x 7 months) to collect routine distribution water samples, calculated for the months sampling was not conducted. The other avoided costs include the estimated amount (\$5 per notification x 4 months) to provide public notification of the failure to sample, calculated for the period that a public notice was required.

Approx. Cost of Compliance

\$295

**TOTAL**

\$213



# Compliance History Report

**PUBLISHED** Compliance History Report for CN600991855, RN106799042, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

**Customer, Respondent, or Owner/Operator:** CN600991855, MILBERGER LANDSCAPING, INC. **Classification:** UNCLASSIFIED **Rating:** -----

**Regulated Entity:** RN106799042, MILBERGER LANDSCAPE NURSERY **Classification:** UNCLASSIFIED **Rating:** -----

**Complexity Points:** 3 **Repeat Violator:** NO

**CH Group:** 14 - Other

**Location:** 3920 N LOOP 1604 E, SAN ANTONIO, BEXAR COUNTY, TX

**TCEQ Region:** REGION 13 - SAN ANTONIO

**ID Number(s):**

**PETROLEUM STORAGE TANK REGISTRATION** REGISTRATION 61627 **EDWARDS AQUIFER REGISTRATION** 13-89101301A

**EDWARDS AQUIFER REGISTRATION** 13-89101301 **PUBLIC WATER SYSTEM/SUPPLY REGISTRATION** 0150563

**Compliance History Period:** September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

**Date Compliance History Report Prepared:** March 24, 2014

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** March 24, 2009 to March 24, 2014

**TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.**

**Name:** Yuliya Dunaway **Phone:** (210) 403-4077

## 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: 01/25/2014 ADMINORDER 2013-1515-PWS-E (1660 Order-Agreed Order With Denial)

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.42(b)(1)

30 TAC Chapter 290, SubChapter D 290.42(e)(3)

Description: Failure to provide disinfection facilities for the groundwater supply for the purpose of microbiological control and distribution protection.

Classification: Moderate

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

30 TAC Chapter 290, SubChapter D 290.39(h)(1)

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

Description: Failure to submit plans and specifications to the Executive Director for review and approval prior to the establishment of a new public water supply. Specifically, at the time of the investigation, the Respondent was operating a business which meets the definition of a non-transient, non-community public water supply without prior approval from the TCEQ.

### **B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

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

N/A

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

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: 09/20/2013 (1156319) CN600991855  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
30 TAC Chapter 290, SubChapter F 290.109(f)(5)  
30 TAC Chapter 290, SubChapter F 290.109(f)(7)  
Description: TCR Routine MR Violation 7/2013 - Failure to collect and/or submit any routine monitoring samples within the required timeline.
- 2 Date: 10/14/2013 (1156319) CN600991855  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
30 TAC Chapter 290, SubChapter F 290.109(f)(5)  
30 TAC Chapter 290, SubChapter F 290.109(f)(7)  
Description: TCR Routine MR Violation 8/2013 - Failure to collect and/or submit any routine monitoring samples within the required timeline.
- 3 Date: 11/07/2013 (1156319) CN600991855  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
30 TAC Chapter 290, SubChapter F 290.109(f)(5)  
30 TAC Chapter 290, SubChapter F 290.109(f)(7)  
Description: TCR Routine MR Violation 9/2013 - Failure to collect and/or submit any routine monitoring samples within the required timeline.
- 4 Date: 11/20/2013 (1156319) CN600991855  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
30 TAC Chapter 290, SubChapter F 290.122(f)  
Description: JUL 2013 TCR Routine MR 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 routine coliform monitoring for the month of 7/2013.
- 5 Date: 12/12/2013 (1156319) CN600991855  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
30 TAC Chapter 290, SubChapter F 290.109(f)(5)  
30 TAC Chapter 290, SubChapter F 290.109(f)(7)  
Description: TCR Routine MR Violation 10/2013 - Failure to collect and/or submit any routine monitoring samples within the required timeline.
- 6 Date: 12/18/2013 (1156319) CN600991855  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
30 TAC Chapter 290, SubChapter F 290.122(f)  
Description: AUG 2013 TCR Routine MR 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 routine coliform monitoring for the month of 8/2013.
- 7 Date: 01/16/2014 (1156319) CN600991855  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
30 TAC Chapter 290, SubChapter F 290.109(f)(5)

|    |                            |   |
|----|----------------------------|---|
|    | Description:               | 30 TAC Chapter 290, SubChapter F 290.109(f)(7)<br>TCR Routine MR Violation 11/2013 - Failure to collect and/or submit any routine monitoring samples within the required timeline.  |
| 8  | Date: 01/27/2014 (1156319) | CN600991855   |
|    | Self Report? NO            | Classification: Moderate  |
|    | Citation:                  | 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)<br>30 TAC Chapter 290, SubChapter F 290.122(f)  |
|    | Description:               | SEP 2013 TCR Routine MR 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 routine coliform monitoring for the month of 9/2013.  |
| 9  | Date: 01/31/2014 (1156319) | CN600991855   |
|    | Self Report? NO            | Classification: Moderate  |
|    | Citation:                  | 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)<br>30 TAC Chapter 290, SubChapter F 290.109(f)(5)<br>30 TAC Chapter 290, SubChapter F 290.109(f)(7)  |
|    | Description:               | TCR Routine MR Violation 12/2013 - Failure to collect and/or submit any routine monitoring samples within the required timeline.  |
| 10 | Date: 02/21/2014 (1156319) | CN600991855   |
|    | Self Report? NO            | Classification: Moderate  |
|    | Citation:                  | 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)<br>30 TAC Chapter 290, SubChapter F 290.122(f)  |
|    | Description:               | OCT 2013 TCR Routine MR 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 routine coliform monitoring for the month of 10/2013. |
| 11 | Date: 02/26/2014 (1156319) | CN600991855   |
|    | Self Report? NO            | Classification: Moderate  |
|    | Citation:                  | 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)<br>30 TAC Chapter 290, SubChapter F 290.109(f)(5)<br>30 TAC Chapter 290, SubChapter F 290.109(f)(7)  |
|    | Description:               | TCR Routine MR Violation 01/2014 - Failure to collect and/or submit any routine monitoring samples within the required timeline.  |

**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

## Component Appendices

### Appendix A

#### All NOV's Issued During Component Period 3/24/2009 and 3/24/2014

- 1 Date: 09/20/2013 (1156319) CN600991855  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
30 TAC Chapter 290, SubChapter F 290.109(f)(5)  
30 TAC Chapter 290, SubChapter F 290.109(f)(7)  
Description: TCR Routine MR Violation 7/2013 - Failure to collect and/or submit any routine monitoring samples within the required timeline.
- 2 Date: 10/14/2013 (1156319) CN600991855  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
30 TAC Chapter 290, SubChapter F 290.109(f)(5)  
30 TAC Chapter 290, SubChapter F 290.109(f)(7)  
Description: TCR Routine MR Violation 8/2013 - Failure to collect and/or submit any routine monitoring samples within the required timeline.
- 3 Date: 11/07/2013 (1156319) CN600991855  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
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30 TAC Chapter 290, SubChapter F 290.109(f)(5)  
30 TAC Chapter 290, SubChapter F 290.109(f)(7)  
Description: TCR Routine MR Violation 10/2013 - Failure to collect and/or submit any routine monitoring samples within the required timeline.
- 6 Date: 12/18/2013 (1156319) CN600991855  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
30 TAC Chapter 290, SubChapter F 290.122(f)  
Description: AUG 2013 TCR Routine MR 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 routine coliform monitoring for the month of 8/2013.
- 7 Date: 01/16/2014 (1156319) CN600991855  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
30 TAC Chapter 290, SubChapter F 290.109(f)(5)  
30 TAC Chapter 290, SubChapter F 290.109(f)(7)  
Description: TCR Routine MR Violation 11/2013 - Failure to collect and/or submit any routine monitoring samples within the required timeline.
- 8 Date: 01/27/2014 (1156319) CN600991855  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
30 TAC Chapter 290, SubChapter F 290.122(f)

Description: SEP 2013 TCR Routine MR 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 routine coliform monitoring for the month of 9/2013.

- 9 Date: 01/31/2014 (1156319) CN600991855  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
30 TAC Chapter 290, SubChapter F 290.109(f)(5)  
30 TAC Chapter 290, SubChapter F 290.109(f)(7)  
Description: TCR Routine MR Violation 12/2013 - Failure to collect and/or submit any routine monitoring samples within the required timeline.
- 10 Date: 02/21/2014 (1156319) CN600991855  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)  
30 TAC Chapter 290, SubChapter F 290.122(f)  
Description: OCT 2013 TCR Routine MR 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 routine coliform monitoring for the month of 10/2013.
- 11 Date: 02/26/2014 (1156319) CN600991855  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
30 TAC Chapter 290, SubChapter F 290.109(f)(5)  
30 TAC Chapter 290, SubChapter F 290.109(f)(7)  
Description: TCR Routine MR Violation 01/2014 - Failure to collect and/or submit any routine monitoring samples within the required timeline.

\* NOVs applicable for the Compliance History rating period 9/1/2008 to 8/31/2013

## Appendix B

### All Investigations Conducted During Component Period March 24, 2009 and March 24, 2014

- |        |                   |           |
|--------|-------------------|-----------|
| Item 1 | August 01, 2013** | (1101045) |
| Item 2 | March 11, 2014    | (1156319) |
| Item 3 | March 14, 2014    | (1156427) |

\* No violations documented during this investigation

\*\*Investigation applicable for the Compliance History Rating period between 09/01/2008 and 08/31/2013.





2. During a record review conducted from March 5, 2014 to March 14, 2014, TCEQ staff documented that the Respondent did not collect routine distribution water samples for coliform analysis for the months of July 2013 through January 2014 and did not provide public notification regarding the failure to sample for the months of July 2013 through October 2013.
3. The Respondent received notice of the violations on March 28, 2014.

## **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 July 2013 through January 2014 and failed to provide public notification regarding the failure to sample for the months of July 2013 through October 2013, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(A) and TEX. HEALTH & SAFETY CODE § 341.033(d).
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 Two Thousand Forty-Six Dollars (\$2,046) 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 Two Thousand Forty-Six Dollar (\$2,046) 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 Two Thousand Forty-Six Dollars (\$2,046) 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: MILBERGER LANDSCAPING, INC., Docket No. 2014-0455-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 30 days after the effective date of this Agreed Order:
    - i. Begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples 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; and
    - ii. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to persons served by the Facility, including but not limited to providing public notification regarding the failure to collect routine distribution water samples, in accordance with 30 TEX. ADMIN. CODE § 290.122.
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.c. below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.ii.; and
  - c. Within 225 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.i. 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

Pamela Moore  
For the Executive Director

8/11/14  
June 13, 2014  
Date

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

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

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

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

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

DAnn Whitford  
Signature

June 13, 2014  
Date

DANN WHITFORD  
Name (Printed or typed)  
Authorized Representative of  
MILBERGER LANDSCAPING, INC.

Comptroller  
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.