

Executive Summary – Enforcement Matter – Case No. 49126

City of Dumas

RN101278778

Docket No. 2014-1157-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

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:

City of Dumas PWS, 124 West 6th Street, Dumas, Moore 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 19, 2014

Comments Received: No

Penalty Information

Total Penalty Assessed: \$1,378

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$1,378

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: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: July 28, 2014 through August 8, 2014

Date(s) of NOE(s): August 8, 2014

Executive Summary – Enforcement Matter – Case No. 49126
City of Dumas
RN101278778
Docket No. 2014-1157-PWS-E

Violation Information

1. Failed to comply with the acute maximum contaminant level (“MCL”) for fecal coliform and *Escherichia coli* (“*E. coli*”) for the month of July 2014 and failed to provide public notification and submit a copy of the public notification to the Executive Director (“ED”) regarding the failure to comply with the acute MCL for fecal coliform and *E. coli* for the month of July 2014 [30 TEX. ADMIN. CODE §§ 290.109(f)(1)(A) and 290.122(a)(2) and (f) and TEX. HEALTH & SAFETY CODE § 341.031(a)].
2. Failed to collect lead and copper tap samples at the required 30 sample sites, have the samples analyzed at an approved laboratory, and submit the results to the ED [30 TEX. ADMIN. CODE § 290.117(c)(2)(C) and (i)(1)].
3. Failed to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failed to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements [30 TEX. ADMIN. CODE § 290.117(i)(6) and (j)].

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 providing water that meets the provisions regarding microbial contaminants. This provision will be satisfied upon six consecutive months of compliant monitoring and reporting;
- ii. Implement improvements to the Facility’s process procedures, guidance, training, and/or oversight to ensure that all future lead and copper tap samples are collected, analyzed by an approved laboratory, and the results reported to the ED within ten days following the end of each monitoring period;
- iii. Mail one copy of the consumer notification of lead tap water monitoring results to persons served at the locations that were sampled for the most recent monitoring period in which lead samples were collected; and
- iv. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to persons served by the Facility and a copy of the public notification is submitted to the ED, including but not limited to providing public notification regarding the failure to comply with the acute MCL for fecal coliform and *E. coli*.

b. Within 45 days:

Executive Summary – Enforcement Matter – Case No. 49126

City of Dumas

RN101278778

Docket No. 2014-1157-PWS-E

- i. Submit written certification demonstrating compliance with Ordering Provisions a.ii., a.iii., and a.iv.; and
- ii. Submit to the Commission a copy of the consumer notification provided to the persons served at the locations that were sampled for lead and the certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements.
- c. Within 60 days, submit written certification demonstrating compliance with Ordering Provision b.ii.
- d. Within 90 days, begin complying with applicable lead and copper monitoring requirements by collecting the required number of lead and copper samples and reporting the results to the ED within ten days of the month following the end of the monitoring period. This provision will be satisfied upon one compliant monitoring period.
- e. Within 225 days, submit written certification demonstrating compliance with Ordering Provision a.i.
- f. Within 470 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: Epifanio Villareal, Enforcement Division, Enforcement Team 2, MC 169, (361) 825-3425; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: The Honorable Pat L. Sims, Mayor, City of Dumas, P.O. Box 438, Dumas, Texas 79029

Vince DiPiazza, City Manager, City of Dumas, P.O. Box 438, Dumas, Texas 79029

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	11-Aug-2014	Screening	13-Aug-2014	EPA Due	31-Dec-2014
	PCW	14-Aug-2014				

RESPONDENT/FACILITY INFORMATION

Respondent	City of Dumas				
Reg. Ent. Ref. No.	RN101278778				
Facility/Site Region	1-Amarillo	Major/Minor Source	Major		

CASE INFORMATION

Enf./Case ID No.	49126	No. of Violations	3
Docket No.	2014-1157-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Sam Keller
		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts
 Estimated Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 13-Aug-2014

Docket No. 2014-1157-PWS-E

PCW

Respondent City of Dumas

Policy Revision 4 (April 2014)

Case ID No. 49126

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101278778

Media [Statute] Public Water Supply

Enf. Coordinator Sam Keller

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	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 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) 5%

>> 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 one NOV with the same/similar violations. Reduction for High Performer classification.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) -5%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% -5%

Screening Date 13-Aug-2014

Docket No. 2014-1157-PWS-E

PCW

Respondent City of Dumas

Policy Revision 4 (April 2014)

Case ID No. 49126

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101278778

Media [Statute] Public Water Supply

Enf. Coordinator Sam Keller

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(f)(1)(A) and 290.122(a)(2) and (f) and Tex. Health & Safety Code § 341.031(a)

Violation Description Failed to comply with the acute maximum contaminant level ("MCL") for fecal coliform and Escherichia coli for the month of July 2014 and failed to provide public notification and submit a copy of the public notification to the Executive Director regarding the failure to comply with the acute MCL for fecal coliform and Escherichia coli for the month of July 2014.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent 100.0%

>> Programmatic Matrix

	Major	Moderate	Minor
Falsification			

Percent 0.0%

Matrix Notes

As a result of the exceedance, persons served by the Facility have been exposed to significant amounts of contaminants which exceed levels that are protective of human health.

Adjustment \$0

\$1,000

Violation Events

Number of Violation Events 1

31 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,000

One monthly event is recommended, calculated for the month of the exceedance.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/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 \$1,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$133

Violation Final Penalty Total \$950

This violation Final Assessed Penalty (adjusted for limits) \$950

Economic Benefit Worksheet

Respondent City of Dumas
Case ID No. 49126
Reg. Ent. Reference No. RN101278778
Media Public Water Supply
Violation No. 1

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$100	28-Jul-2014	28-Feb-2015	0.59	\$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 training/sampling delayed cost includes the estimated amount to implement improvements to the Facility's process procedures, guidance, training and/or oversight to ensure that all public notifications are provided and reported to the Executive Director, 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)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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]	\$100	1-Jul-2014	31-Jul-2014	1.00	\$5	\$100	\$105
Other (as needed)	\$25	17-Jul-2014	18-Jul-2014	0.00	\$0	\$25	\$25

Notes for AVOIDED costs

The one-time avoided cost includes the estimated amount for additional sampling and oversight to identify the source of the contamination, calculated for the month in which the exceedance occurred.

The other avoided cost includes the estimated amount to provide public notification (\$25 per notice x one notification), calculated for the period when public notification was required.

Approx. Cost of Compliance \$225

TOTAL \$133

Screening Date 13-Aug-2014

Docket No. 2014-1157-PWS-E

PCW

Respondent City of Dumas

Policy Revision 4 (April 2014)

Case ID No. 49126

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101278778

Media [Statute] Public Water Supply

Enf. Coordinator Sam Keller

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 290.117(c)(2)(C) and (1)(1)

Violation Description Failed to collect lead and copper tap samples at the required 30 sample sites, have the samples analyzed at an approved laboratory, and submit the results to the Executive Director. Specifically, it was documented that the Respondent collected only 11 of the 30 required lead and copper samples for the January 1, 2011 through December 31, 2013 monitoring period.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (30.0%). Includes 'OR' label.

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0.0%).

Matrix Notes Failure to collect lead and copper samples could expose persons served by the Facility to undetected contaminants which would exceed levels protective of human health.

Adjustment \$700

\$300

Violation Events

Number of Violation Events 1 Number of violation days 1096

Table for event frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event. 'single event' is marked with an 'x'.

Violation Base Penalty \$300

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A. 'N/A' is marked with an 'x'.

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

Violation Subtotal \$300

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$685

Violation Final Penalty Total \$285

This violation Final Assessed Penalty (adjusted for limits) \$285

Economic Benefit Worksheet

Respondent City of Dumas
Case ID No. 49126
Reg. Ent. Reference No. RN101278778
Media Public Water Supply
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$100	28-Jul-2014	28-Feb-2015	0.59	\$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 record keeping system delayed cost includes the estimated amount to implement improvements to the Facility's process procedures, guidance, training and/or oversight to ensure that future lead and copper samples are collected by the Facility's personnel, analyzed by the Facility's laboratories, and reported to the Executive Director, 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]	\$570	1-Jan-2011	31-Dec-2013	3.92	\$112	\$570	\$682
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The one-time avoided cost includes the estimated amount to collect and have all lead and copper samples analyzed (\$30 per sample x 19 missed samples), calculated for the monitoring period in which samples were required.

Approx. Cost of Compliance

\$670

TOTAL

\$685

Screening Date 13-Aug-2014

Docket No. 2014-1157-PWS-E

PCW

Respondent City of Dumas

Policy Revision 4 (April 2014)

Case ID No. 49126

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN101278778

Media [Statute] Public Water Supply

Enf. Coordinator Sam Keller

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 290.117(i)(6) and (j)

Violation Description

Failed to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failed to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements. Specifically, the Respondent did not mail the consumer notification to the persons served at the locations sampled nor did the Respondent submit a copy of the consumer notification or the required certification to the TCEQ for the January 1, 2011 through December 31, 2013 monitoring period.

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 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$850

\$150

Violation Events

Number of Violation Events 1

89 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

Violation Base Penalty \$150

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/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 \$150

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$60

Violation Final Penalty Total \$143

This violation Final Assessed Penalty (adjusted for limits) \$143

Economic Benefit Worksheet

Respondent City of Dumas
Case ID No. 49126
Req. Ent. Reference No. RN101278778
Media Public Water Supply
Violation No. 3

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

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]	\$56	31-Dec-2013	13-Aug-2014	1.53	\$4	\$56	\$60
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The one-time avoided cost includes the estimated amount to prepare and mail the consumer notification for the January 1, 2011 through December 31, 2013 monitoring period to persons served at the locations that were sampled and to the TCEQ (($\$0.50 \times 11$ sampled locations + $\$50$) \times 1 monitoring period), calculated from the date the consumer notification was due to the screening date.

Approx. Cost of Compliance

\$56

TOTAL

\$60



Compliance History Report

PUBLISHED Compliance History Report for CN600649370, RN101278778, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator:	CN600649370, City of Dumas	Classification:	HIGH	Rating:	0.00
Regulated Entity:	RN101278778, City of Dumas	Classification:	NOT APPLICABLE	Rating:	N/A
Complexity Points:	N/A	Repeat Violator:	N/A		
CH Group:	14 - Other				
Location:	124 WEST 6TH STREET, DUMAS, MOORE COUNTY, TEXAS				
TCEQ Region:	REGION 01 - AMARILLO				
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1710001				

Compliance History Period:	September 01, 2008 to August 31, 2013	Rating Year:	2013	Rating Date:	09/01/2013
Date Compliance History Report Prepared:	August 13, 2014				
Agency Decision Requiring Compliance History:	Enforcement				
Component Period Selected:	August 13, 2009 to August 13, 2014				
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.					
Name:	Sam Keller			Phone:	(512) 239-2678

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If YES for #2, who is the current owner/operator? N/A
- 4) If YES for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If YES, when did the change(s) in owner or operator occur? N/A

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

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

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 August 11, 2010 (842122)

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: 07/21/2014 (1186303) CN600649370
Self Report? NO Classification: Major
Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(1)(A)

Description: TCR AMCL Violation 07/2014 - System received an acute maximum contaminant level violation.

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 DUMAS
RN101278778

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

AGREED ORDER
DOCKET NO. 2014-1157-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 Dumas (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 located at 124 West 6th Street in Dumas, Moore County, Texas (the "Facility") that has 5,432 retail service connections, 53 wholesale connections, and serves at least 25 people per day for at least 60 days per year.
2. During a record review conducted from July 28, 2014 through August 8, 2014, TCEQ staff documented that the Respondent did not comply with the acute maximum contaminant level ("MCL") for fecal coliform and *Escherichia coli* for the month of July 2014 and did not provide public notification or submit a copy of the public notification to the Executive Director regarding the failure to comply with the acute MCL for fecal coliform and *Escherichia coli* for the month of July 2014.
3. During a record review conducted from July 28, 2014 through August 8, 2014, TCEQ staff documented that the Respondent collected only 11 of the 30 required lead and copper samples for the January 1, 2011 through December 31, 2013 monitoring period.
4. During a record review conducted from July 28, 2014 through August 8, 2014, TCEQ staff documented that the Respondent did not mail the consumer notification of lead tap water monitoring results to the persons served at the locations sampled nor did the Respondent submit a copy of the consumer notification or the required certification to the TCEQ for the January 1, 2011 through December 31, 2013 monitoring period.
5. The Respondent received notice of the violations on August 11, 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 comply with the acute MCL for fecal coliform and *Escherichia coli* for the month of July 2014 and failed to provide public notification and submit a copy of the public notification to the Executive Director regarding the failure to comply with the acute MCL for fecal coliform and *Escherichia coli* for the month of July 2014, in violation of 30 TEX. ADMIN. CODE §§ 290.109(f)(1)(A) and 290.122(a)(2) and (f) and TEX. HEALTH & SAFETY CODE § 341.031(a).
3. As evidenced by Findings of Fact No. 3, the Respondent failed to collect lead and copper tap samples at the required 30 sample sites, have the samples analyzed at an approved laboratory, and submit the results to the Executive Director, in violation of 30 TEX. ADMIN. CODE § 290.117(c)(2)(C) and (i)(1).
4. As evidenced by Findings of Fact No. 4, the Respondent failed to mail consumer notification of lead tap water monitoring results to persons served at the locations that

were sampled and failed to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements, in violation of 30 TEX. ADMIN. CODE § 290.117(i)(6) and (j).

5. 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.
6. An administrative penalty in the amount of One Thousand Three Hundred Seventy-Eight Dollars (\$1,378) 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 Three Hundred Seventy-Eight Dollar (\$1,378) 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 Three Hundred Seventy-Eight Dollars (\$1,378) as set forth in Section II, Paragraph 6 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 Dumas, Docket No. 2014-1157-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 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;

- ii. Implement improvements to the Facility's process procedures, guidance, training, and/or oversight to ensure that all future lead and copper tap samples are collected, analyzed by an approved laboratory, and the results reported to the Executive Director within ten days following the end of each monitoring period, in accordance with 30 TEX. ADMIN. CODE § 290.117;
 - iii. Mail one copy of the consumer notification of lead tap water monitoring results to persons served at the locations that were sampled for the most recent monitoring period in which lead samples were collected, in accordance with 30 TEX. ADMIN. CODE § 290.117; and
 - iv. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to persons served by the Facility and a copy of the public notification is submitted to the Executive Director, including but not limited to providing public notification regarding the failure to comply with the acute MCL for fecal coliform and *Escherichia coli*, in accordance with 30 TEX. ADMIN. CODE § 290.122.
- b. Within 45 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 Nos. 2.a.ii., 2.a.iii., and 2.a.iv.; and
 - ii. Submit to the Commission a copy of the consumer notification provided to the persons served at the locations that were sampled for lead and the certification that the consumer notification has been distributed in a manner consistent with TCEQ requirements, as required by 30 TEX. ADMIN. CODE § 290.117. The copy of the consumer notification and the certification shall be mailed to:

Public Drinking Water Section
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
- c. Within 60 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 complying with applicable lead and copper monitoring requirements by collecting the required number of lead and copper samples and reporting the results to the Executive Director within ten days of the month following the end of the monitoring period, in accordance with 30 TEX. ADMIN. CODE § 290.117. This provision will be satisfied upon one compliant monitoring period;
- e. Within 225 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.i.; and
- f. Within 470 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

Pamela Maricq
For the Executive Director

3/9/15
Date

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

Vince DiPozzo
Signature

11/10/14
Date

Vince DiPozzo
Name (Printed or typed)
Authorized Representative of
City of Dumas

City Manager
Title

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