

Executive Summary – Enforcement Matter – Case No. 52295
WTR Real Estate Holdings, L.C. dba Heartland House
RN107135956
Docket No. 2016-0692-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:

Heartland House, 2605 North County Road 1700 near Lubbock, Lubbock 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: August 19, 2016

Comments Received: No

Penalty Information

Total Penalty Assessed: \$246

Amount Deferred for Naturally Occurring Inorganic Contaminants: \$246

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

Supplemental Environmental Project ("SEP") Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - N/A

Site/RN - N/A

Major Source: No

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: April 11, 2016 through April 29, 2016

Date(s) of NOE(s): April 29, 2016

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WTR Real Estate Holdings, L.C. dba Heartland House
RN107135956
Docket No. 2016-0692-PWS-E

Violation Information

Failed to comply with the maximum contaminant level ("MCL") of 4.0 milligrams per liter of fluoride based on a running annual average [30 TEX. ADMIN. CODE § 290.106(f)(3) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Within 120 days, complete a feasibility study, or update an existing feasibility study, and submit a written report or engineering study conducted by a Texas registered professional engineer regarding the results of the feasibility study to evaluate the necessary corrective actions designed to achieve compliance with the MCL for fluoride. The report shall include a tentative schedule describing additional studies, tests, or other methods that may be utilized for the completion of necessary corrective actions within 1,095 days. If the Respondent purchases or sells water, a copy of the purchase water contract must be submitted with the feasibility study report or engineering study;
- b. Within 135 days, submit written certification to demonstrate compliance with a.;
- c. 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;
- d. 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 MCL for fluoride;
- e. Within 195 days, submit written certification to demonstrate compliance with c.;
- f. Within 1,095 days, return to compliance with the running annual average MCL for fluoride; and
- g. Within 1,110 days, submit written certification to demonstrate compliance with f.

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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: Yuliya Dunaway, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4077; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548
TCEQ SEP Coordinator: N/A
Respondent: Stewart Townsen, Managing Member, Heartland House, P.O. Box 93667, Lubbock, Texas 79493-3667
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned PCW	2-May-2016	Screening	5-May-2016	EPA Due	30-Jun-2016
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RESPONDENT/FACILITY INFORMATION	
Respondent	WTR Real Estate Holdings, L.C. dba Heartland House
Reg. Ent. Ref. No.	RN107135956
Facility/Site Region	2-Lubbock
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	52295	No. of Violations	1
Docket No.	2016-0692-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Yuliya Dunaway
		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	\$150
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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	64.0% Adjustment	Subtotals 2, 3, & 7	\$96
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Notes: Enhancement for three NOVs with same/similar violations, two NOVs with dissimilar violations, one agreed order containing a denial of liability and one agreed order without a denial of liability.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$10,747
 Estimated Cost of Compliance: \$40,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$246
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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	\$246
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$246
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$246
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Screening Date 5-May-2016

Docket No. 2016-0692-PWS-E

PCW

Respondent WTR Real Estate Holdings, L.C. dba Heartland House

Policy Revision 4 (April 2014)

Case ID No. 52295

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN107135956

Media [Statute] Public Water Supply

Enf. Coordinator Yuliya Dunaway

Compliance History Worksheet

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

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	3	15%
	Other written NOVs	2	4%
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	1	25%
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%
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) 64%

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

N/A

Adjustment Percentage (Subtotal 3) 0%

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

N/A

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

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

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 64%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 64%

Screening Date 5-May-2016

Docket No. 2016-0692-PWS-E

PCW

Respondent WTR Real Estate Holdings, L.C. dba Heartland House

Policy Revision 4 (April 2014)

Case ID No. 52295

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN107135956

Media [Statute] Public Water Supply

Enf. Coordinator Yuliya Dunaway

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.106(f)(3) and Tex. Health & Safety Code § 341.0315(c)

Violation Description Failed to comply with the maximum contaminant level ("MCL") of 4.0 milligrams per liter ("mg/L") of fluoride based on a running annual average. Specifically, the running annual average concentrations for fluoride were 4.3 mg/L for the second quarter of 2015 and 4.2 mg/L for the third and fourth quarters of 2015.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		X	
Potential			

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Exceeding the MCL for fluoride based on the running annual average caused persons served by the Facility to be exposed to a significant amount of pollutants which do not exceed levels that are protective of human health.

Adjustment \$850

\$150

Violation Events

Number of Violation Events 1

275 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	X
single event	

Violation Base Penalty \$150

One annual event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDP RP/Settlement Offer

Extraordinary		
Ordinary		
N/A	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 \$10,747

Violation Final Penalty Total \$246

This violation Final Assessed Penalty (adjusted for limits) \$246

Economic Benefit Worksheet

Respondent WTR Real Estate Holdings, L.C. dba Heartland House

Case ID No. 52295

Reg. Ent. Reference No. RN107135956

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
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$40,000	30-Jun-2015	1-May-2019	3.84	\$512	\$10,236	\$10,747
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs include the estimated amount for the Facility to investigate, identify, and implement the necessary corrective actions to return to compliance with the MCL for fluoride, calculated from the last day of the first quarter of noncompliance 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

\$40,000

TOTAL

\$10,747



Compliance History Report

PUBLISHED Compliance History Report for CN604532770, RN107135956, Rating Year 2015 which includes Compliance History (CH) components from September 1, 2010, through August 31, 2015.

Customer, Respondent, or Owner/Operator:	CN604532770, WTR Real Estate Holdings, L.C.	Classification: NOT APPLICABLE	Rating: N/A
Regulated Entity:	RN107135956, HEARTLAND HOUSE	Classification: NOT APPLICABLE	Rating: N/A
Complexity Points:	N/A	Repeat Violator:	N/A
CH Group:	14 - Other		
Location:	2605 N COUNTY ROAD 1700 NEAR LUBBOCK, LUBBOCK COUNTY, TX		
TCEQ Region:	REGION 02 - LUBBOCK		
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1520292		

Compliance History Period:	September 01, 2010 to August 31, 2015	Rating Year:	2015	Rating Date:	09/01/2015
Date Compliance History Report Prepared:	May 03, 2016				
Agency Decision Requiring Compliance History:	Enforcement				
Component Period Selected:	May 03, 2011 to May 03, 2016				

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? NO
- 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: 06/25/2015 ADMINORDER 2014-0981-PWS-E (1660 Order-Agreed Order With Denial)
 - 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: Failed to submit plans and specifications for the Facility to the Executive Director for review and approval prior to the establishment of a new public water supply.
 - Classification: Moderate
 - Citation: 30 TAC Chapter 290, SubChapter D 290.42(b)(1)
 30 TAC Chapter 290, SubChapter D 290.42(e)(3)
 - Description: Failed to provide disinfection facilities for all groundwater supplies for the purpose of microbiological control and distribution protection. Specifically, there was no disinfection equipment installed at the Facility.
 - Classification: Moderate
 - Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(A)(ii)
 5A THSC Chapter 341, SubChapter A 341.0315(c)
 - Description: Failed to provide a pressure tank capacity of 50 gallons per connection. Specifically, with 20 connections the Facility is required to provide a minimum pressure tank capacity of 1,000 gallons. However, only 86 gallons were provided which is a 91% deficiency.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(e)(4)(A)
5A THSC Chapter 341, SubChapter A 341.033(a)

Description: Failed to operate the Facility under the direct supervision of a licensed water works operator who holds a Class "D" or higher license.

Classification: Moderate

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

Description: Failed to provide the well with a concrete sealing block that extends a minimum of three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inches per foot.

Classification: Moderate

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

Description: Failed to provide a well casing vent that has an opening that is covered with 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well. Specifically, no casing vent was installed on the well.

Classification: Moderate

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

Description: Failed to provide each well with a flow measuring device to measure production yields and provide for the accumulation of water production data.

Classification: Moderate

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

Description: Failed to protect the well with an intruder-resistant fence with a lockable gate or enclose the well in a locked and ventilated well house.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)

Description: Failed to obtain a sanitary control easement that covers the land within 150 feet of the Facility's well.

Classification: Moderate

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

Description: Failed to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)
30 TAC Chapter 290, SubChapter F 290.121(b)

Description: Failed to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the Facility will use to comply with the monitoring requirements.

Classification: Moderate

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

Description: Failed to provide an accurate and up-to-date map of the distribution system so that valves and mains can be easily located during emergencies.

2 Effective Date: 03/04/2016 ADMINORDER 2015-1082-PWS-E (Findings Order-Agreed Order Without Denial)

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(3)
5A THSC Chapter 341, SubChapter A 341.0315(c)

Description: SEL MCL 1Q2015 - During the first quarter of 2015 the system violated the maximum contaminant level for SEL with a RAA of 0.06 mg/L.

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(2)
5A THSC Chapter 341, SubChapter A 341.031(a)

Description: NO3 AMCL 2Q2015 - This system exceeded the MCL of 10 mg/L for nitrate (as nitrogen) with a sample result of 18 mg/L collected on 06/22/2015.

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.):

Published Compliance History Report for CN604532770, RN107135956, Rating Year 2015 which includes Compliance History (CH) components from May 03, 2011, through May 03, 2016.

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: 05/04/2015 (1261299) CN604532770
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(3)
5A THSC Chapter 341, SubChapter A 341.0315(c)
Description: SEL MCL 1Q2015 - During the first quarter of 2015 the system violated the maximum contaminant level for SEL with a RAA of 0.06 mg/L.
- 2 Date: 06/25/2015 (1261299) CN604532770
Self Report? NO Classification: Major
Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(2)
5A THSC Chapter 341, SubChapter A 341.031(a)
Description: NO3 AMCL 2Q2015 - This system exceeded the MCL of 10 mg/L for nitrate (as nitrogen) with a sample result of 18 mg/L collected on 06/22/2015.
- 3 Date: 08/31/2015 (1328771) CN604532770
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(3)(C)
Description: FLU MCL 2Q2015 - During the second quarter of 2015 the system violated the maximum contaminant level for Fluoride with a RAA of 4.3 mg/L.
- 4 Date: 10/16/2015 (1328771) CN604532770
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(3)(C)
Description: FLU MCL 3Q2015 - During the third quarter of 2015 the system violated the maximum contaminant level for Fluoride with a RAA of 4.2 mg/L.
- 5 Date: 01/25/2016 (1328771) CN604532770
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(3)(C)
Description: FLU MCL 4Q2015 - During the fourth quarter of 2015 the system violated the maximum contaminant level for Fluoride with a RAA of 4.2 mg/L.

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 NOVs Issued During Component Period 5/3/2011 and 5/3/2016

1*	Date: 05/04/2015 (1261299) CN604532770
	Self Report? NO Classification: Moderate
	Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(3) 5A THSC Chapter 341, SubChapter A 341.0315(c)
	Description: SEL MCL 1Q2015 - During the first quarter of 2015 the system violated the maximum contaminant level for SEL with a RAA of 0.06 mg/L.
2*	Date: 06/25/2015 (1261299) CN604532770
	Self Report? NO Classification: Major
	Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(2) 5A THSC Chapter 341, SubChapter A 341.031(a)
	Description: NO3 AMCL 2Q2015 - This system exceeded the MCL of 10 mg/L for nitrate (as nitrogen) with a sample result of 18 mg/L collected on 06/22/2015.
3*	Date: 08/31/2015 (1328771) CN604532770
	Self Report? NO Classification: Moderate
	Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(3)(C)
	Description: FLU MCL 2Q2015 - During the second quarter of 2015 the system violated the maximum contaminant level for Fluoride with a RAA of 4.3 mg/L.
4	Date: 10/16/2015 (1328771) CN604532770
	Self Report? NO Classification: Moderate
	Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(3)(C)
	Description: FLU MCL 3Q2015 - During the third quarter of 2015 the system violated the maximum contaminant level for Fluoride with a RAA of 4.2 mg/L.
5	Date: 01/25/2016 (1328771) CN604532770
	Self Report? NO Classification: Moderate
	Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(3)(C)
	Description: FLU MCL 4Q2015 - During the fourth quarter of 2015 the system violated the maximum contaminant level for Fluoride with a RAA of 4.2 mg/L.

* NOVs applicable for the Compliance History rating period 9/1/2010 to 8/31/2015

Appendix B

All Investigations Conducted During Component Period May 03, 2011 and May 03, 2016

Item 1	March 12, 2014** (1152526)
Item 2	June 16, 2014** (1173909)
Item 3	July 02, 2015** (1261299)
Item 4	July 10, 2015** (1261515)
Item 5	April 27, 2016 (1328771)
Item 6	April 29, 2016 (1329729)

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2010 and 08/31/2015.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
WTR REAL ESTATE HOLDINGS,
L.C. DBA HEARTLAND HOUSE
RN107135956

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

**AGREED ORDER
DOCKET NO. 2016-0692-PWS-E**

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding WTR Real Estate Holdings, L.C. dba Heartland House (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 Order to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including 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 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 agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this 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 2605 North County Road 1700 near Lubbock, Lubbock County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 20 service connections, and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(69).
2. During a record review conducted from April 11, 2016 through April 29, 2016, TCEQ staff documented that the running annual average concentrations of fluoride were 4.3 milligrams per liter ("mg/L") for the second quarter of 2015 and 4.2 mg/L for the third and fourth quarters of 2015.

II. CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, the Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2, the Respondent failed to comply with the maximum contaminant level ("MCL") of 4.0 mg/L of fluoride based on a running annual average, in violation of 30 TEX. ADMIN. CODE § 290.106(f)(3) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049(a), the TCEQ has the authority to assess an administrative penalty against the Respondent for violations of state statutes within the TCEQ'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 \$246 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The amount of \$246 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order and shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any requirement contained in this Order, the Executive Director may demand payment of all or part of the conditionally deferred penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed a penalty as set forth in Conclusion of Law No. 4 for violations of state statutes and rules of the TCEQ. The payment of this penalty and the Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations that are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: WTR Real Estate Holdings, L.C. dba Heartland House, Docket No. 2016-0692-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 120 days after the effective date of this Order, complete a feasibility study, or update an existing feasibility study, and submit a written report or engineering study conducted by a Texas registered professional engineer regarding the results of the feasibility study to evaluate the necessary corrective actions designed to achieve compliance with the MCL for fluoride. The report shall include a tentative schedule describing additional studies, tests, or other methods that may be utilized for the completion of necessary corrective actions within 1,095 days after the effective date of this Order. If the Respondent purchases or sells water, a copy of the purchase water contract must be submitted with the feasibility study report or engineering study. The evaluation shall be sent to the addresses in listed in Ordering Provision No. 2.g;
- b. Within 135 days after the effective date of this Order, submit written certification as described in Ordering Provision No. 2.g below to demonstrate compliance with Ordering Provision No. 2.a;
- c. Within 180 days after the effective date of this 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.g;
- d. Within 180 days after the effective date of this Order, and on a semi-annual basis thereafter, submit progress reports to the addresses listed in Ordering Provision No. 2.g below. These reports shall include information regarding actions taken to provide water which meets the MCL for fluoride;
- e. Within 195 days after the effective date of this Order, submit written certification as described in Ordering Provision No. 2.g below to demonstrate compliance with Ordering Provision No. 2.c;
- f. Within 1,095 days after the effective date of this Order, return to compliance with the running annual average MCL for fluoride, in accordance with 30 TEX. ADMIN. CODE § 290.106; and
- g. Within 1,110 days after the effective date of this 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.f. The certification shall be signed by the Respondent and shall 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. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this 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. Extension requests shall be sent to the Order Compliance Team at the address listed above.
6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms in this Order.
7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. This 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 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.

9. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this 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 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.
10. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

