

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

October 3, 2011

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

VIA FACSIMILE NO. 512/ 239-5533

Re: SOAH Docket No. 582-10-5983; TCEQ Docket No. 2010-0222-PWS-E;
*Executive Director of the Texas Commission on Environmental Quality v.
Mostafa Solimon d/b/a Willowbrook Subdivision*

Dear Mr. Trobman:

The Administrative Law Judge (ALJ) has received the Executive Director's exceptions to his Proposal for Decision and Proposed Order. After reviewing and reconsidering the oral testimony and documentary evidence, the ALJ agrees with the Executive Director's exception regarding well production capacity. Executive Director Exhibits 2 and 3 both document that the well capacity was determined by Commission personnel to be inadequate during an inspection conducted after the installation of the pump in 1994.

The ALJ does not agree with the Executive Director's other exception, which concerns pressure tank capacity. Adding the proposed well production capacity penalty of \$2,499 to the ALJ's original proposal would yield a total revised administrative penalty of \$3,748.

Therefore, the ALJ recommends the following modifications to the Proposed Order:

1. Finding of Fact No. 19 should be modified by replacing "50" with "25".
2. Finding of Fact No. 20 should be modified by changing "has a capacity greater than 1.5 gpm per connection" to "failed to have a capacity greater than 1.5 gpm per connection".
3. Conclusion of Law No. 8 should be modified by changing "did not violate" to "violated" and "or" to "and."
4. Conclusion of Law No. 16 should be modified by replacing "\$1,249" with "\$3,748."

5. Ordering Provision No. 1.k should be modified by deleting “[Not Required]” and adding “Within 180 days after the effective date of the Commission Order, provide a total well production capacity of 1.5 gpm per connection, in accordance with 30 TEX. ADMIN. CODE § 290.45.”
6. The first paragraph of Ordering Provision 1.l. should be modified to read as follows:

Within 195 days after the effective date of the Commission 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. 1.k. The certifications required in Ordering Provisions 1.b, 1.d, 1.f., 1.h., 1.j, and 1.l shall be notarized by a State of Texas Notary Public and include the following certification language:
7. Ordering Provision No. 2 should be modified by replacing "\$1,249" with "\$3,748.”

The ALJ does not recommend any other changes to the Proposal for Decision or the Order.

A copy of the revised Proposed Order with the recommended modifications is attached to this letter.

Sincerely,



Henry D. Card
Administrative Law Judge

HDC/lh
cc:Mailing List

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AGENCY: Environmental Quality, Texas Commission on (TCEQ)
STYLE/CASE: MOSTAFA A. SOLIMAN / WILLOWBROOK SUBDIVISION
SOAH DOCKET NUMBER: 582-10-5983
REFERRING AGENCY CASE: 2010-0222-PWS-E

**STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**ADMINISTRATIVE LAW JUDGE
ALJ HENRY D. CARD**

REPRESENTATIVE / ADDRESS

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MOSTAFA A. SOLIMON D/B/A WILLOWBROOK
SUBDIVISION

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



An ORDER Assessing Administrative Penalties and Requiring Corrective Action Against Mostafa Solimon dba Willowbrook Subdivision; TCEQ Docket No. 2010-0222-PWS-E and SOAH Docket No. 582-10-5983

On _____, the Texas Commission on Environmental Quality (TCEQ or the Commission) considered the Executive Director's Preliminary Report and Petition (EDPRP) recommending that the Commission enter an order assessing administrative penalties against and requiring corrective action by Mostafa Solimon dba Willowbrook Subdivision (Respondent). A Proposal for Decision (PFD) was presented by Henry D. Card, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), who conducted a hearing concerning the EDPRP on June 30, 2011, in Austin, Texas.

FINDINGS OF FACT

1. Respondent owns and operates a public water system (the Facility) located at 31902 Willowbrook Street, Waller, Texas, serving the Willowbrook Subdivision.
2. The Facility has approximately 19-22 active service connections and serves at least 25 people per day for at least 60 days per year.
3. On December 14, 2009, TCEQ Investigators Stacy Marhofer and Barry Price conducted an inspection of the Facility.
4. Ms. Marhofer called Respondent's home number three times and his work number once before the inspection and left messages each time.
5. Respondent was not present at the inspection.

6. The investigation was to determine if the Facility was in compliance with Agreed Order No. 2005-0150-MLM-E, issued on November 6, 2006.
7. At the inspection, Ms. Marhofer and Mr. Price found 18 alleged violations of the Commission's rules, the Texas Health and Safety Code, and/or the previous Agreed Order. The EDPRP recommended a total administrative penalty of \$8,059 against Respondent for those violations. Ultimately, the Executive Director dropped some violations and consolidated others, reducing the number of alleged violations to 12 and the proposed administrative penalty to \$4,095.
8. The Executive Director sent Respondent his Preliminary Report and Petition (EDPRP) on April 19, 2010. The Commission received Respondent's one-page reply to the EDPRP, denying any violations, on July 16, 2010, followed by a more detailed response on September 11, 2010.
9. Notice of the State Office of Administrative Hearings (SOAH) hearing was sent August 25, 2010, which was more than ten days before the hearing.
10. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
11. After some continuances, the hearing on the merits was convened June 30, 2011, before ALJ Henry D. Card. The Executive Director and Respondent participated in the hearing and offered testimony, documentary evidence, and arguments. The hearing was adjourned and the record closed the same day, June 30, 2011.

12. Respondent's class D operator's license was expired at the time of the investigation and remains expired.
13. The Facility was not operated under the direct supervision of a water works operator who held a valid class "D" or higher license (Alleged Violation No. 1).
14. At the time of the investigation, a field test conducted at a system service connection across the street from the Facility revealed a chlorine residual of 0.0 mg/L.
15. The Facility failed to maintain a residual disinfectant concentration in the water within the distribution system of at least 0.2 milligrams per liter ("mg/L") free chlorine (Alleged Violation No. 2).
16. At the time of the investigation, there was excessive vegetation growing within the Facility and there was a large pile of debris in a corner as well as scattered throughout the well site.
17. Respondent failed to initiate maintenance and housekeeping practices to ensure a good general appearance of the Facility (Alleged Violation No. 3).
18. Respondent failed to secure a sanitary control easement covering all property within 150 feet of the well or an exemption from that requirement (Alleged Violation No. 4).
19. The well at the Facility has a capacity of 25 gallons per minute (gpm).
20. The well at the Facility failed to have a capacity greater than 1.5 gpm per connection (Alleged Violation No. 5).
21. At the time of the investigation, the Facility had 20 active connections.
22. At the time of the investigation, the Facility was providing 1,050 gallons of pressure tank capacity.

23. At the time of the investigation, the Facility provided a pressure tank capacity of at least 50 gallons per connection (Alleged Violation No. 6).
24. At the time of the investigation, the following records were not available for review: an up-to-date chemical and microbiological monitoring plan; a map of the distribution system; the amount of chemicals used each week; the amount of water treated each week; the date, location, and nature of water quality; pressure or outage complaints received by the system and the results of any subsequent complaint investigation; the dates that dead-end mains were flushed; and maintenance records for the Facility and its equipment (Alleged Violation No. 7).
25. At the time of the investigation, Respondent had failed to post a legible sign at the Facility that contained the name of the water supply and the emergency telephone numbers where a responsible official could be contacted (Alleged Violation No. 8).
26. The Facility failed to compile and maintain a thorough plant operations manual for operator review and reference (Alleged Violation No. 9).
27. Respondent did not fail to conduct annual inspections of the Facility's two pressure tanks (Alleged Violation No. 10).
28. At the time of the investigation, the Facility's hypochlorination system solution and pump were in plain sight behind a chain link fence that did not provide adequate security.
29. The Facility failed to house the hypochlorination solution container and pump in a secure enclosure to protect them from adverse weather conditions and vandalism (Alleged Violation No. 11).

30. Respondent failed to provide an all-weather access road to the Facility well site (Alleged Violation No. 12).
31. Respondent is able to pay the assessed administrative penalty.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter under TEX. HEALTH & SAFETY CODE ch. 341.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. Chapter 2003.
3. Adequate and timely notice of the proceeding was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. The Facility violated 30 TAC § 290.46(e)(3)(A) and TEX. HEALTH & SAFETY CODE § 341.033 (Alleged Violation No. 1).
5. The Facility violated 30 TAC § 290.110(b)(4) and TEX. HEALTH & SAFETY CODE § 341.0315(c) (Alleged Violation No. 2).
6. The Facility violated 30 TAC § 290.46(m) (Alleged Violation No. 3).
7. The Facility violated 30 TAC § 290.41(c)(1)(F) and TCEQ Agreed Order Docket No. 2005-0150-MLM-E, Ordering Provision No. 2.b.i (Alleged Violation No. 4).
8. The Facility violated 30 TAC § 290.45(b)(1)(A)(i) and TCEQ Agreed Order Docket No. 2005-0150-MLM-E, Ordering Provision No. 2.c.i (Alleged Violation No. 5).
9. The Facility did not violate 30 TAC § 290.45(b)(1)(A)(ii) or TCEQ Agreed Order Docket No. 2005-0150-MLM-E, Ordering Provision No. 2.c.ii (Alleged Violation No. 6).

10. The Facility violated 30 TAC §§ 290.46(f)(3)(A)(i)(III), (ii)(III), (iii), (iv), (vi), (n)(2), 290.121(a) and (b), and TCEQ Agreed Order Docket No. 2005-0150-MLM-E, Ordering Provision No. 2.a.vi (Alleged Violation No. 7).
11. The Facility violated 30 TAC § 290.46(t) (Alleged Violation No. 8).
12. The Facility violated 30 TAC § 290.42(l) (Alleged Violation No. 9).
13. The Facility did not violate 30 TAC § 290.46(m)(1)(B) (Alleged Violation No. 10).
14. The Facility violated 30 TAC § 290.42(e)(5) (Alleged Violation No. 11).
15. The Facility violated 30 TAC § 290.41(c)(3)(P) (Alleged Violation No. 12).
16. Respondent should be assessed an administrative penalty of \$3,748 for the violations committed.
17. Respondent should be ordered to take the requisite actions to correct the violations committed, as recommended by the Executive Director.

ORDERING PROVISIONS

NOW, THEREFORE, BE IT ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Respondent shall implement the following corrective measures:
 - a. Immediately upon the effective date of the Commission Order:
 - i. Employ a water works operator that holds a valid class “D” or higher license, in accordance with 30 Tex. Admin. Code § 290.46;
 - ii. Begin operating the disinfection equipment to maintain a disinfectant residual concentration of at least 0.2 mg/L free

- chlorine throughout the distribution system at all times, in accordance with 30 Tex. Admin. Code § 290.110;
- iii. Begin recording the amount of water treated each week, in accordance with 30 Tex. Admin. Code § 290.46; [and]
 - iv. [Not required]
- b. Within 15 days after the effective date of the Commission Order, submit written certification, as described in Ordering Provision No. 1.1 below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 1.a.
- c. Within 30 days after the effective date of the Commission Order:
- i. Initiate maintenance and housekeeping practices to ensure a good general appearance of the Facility, including but not limited to, removing all excessive vegetation and debris from within the Facility, in accordance with 30 Tex. Admin. Code § 290.46;
 - ii. Submit and begin maintaining on file copies of the Facility's operating records, including but not limited to, the amount of chemicals used each week, the date, location, and nature of water quality, pressure, or outage complaints received by the system and the results of any subsequent complaint investigation, the dates that dead-end mains were flushed and maintenance records for the Facility and its equipment, in accordance with 30 Tex. Admin. Code § 290.46; and

- iii. Post a legible sign at the Facility that provides the name of the water supply and an emergency telephone number where a responsible official can be contacted, in accordance with 30 Tex. Admin. Code § 290.46.
- d. Within 45 days after the effective date of the Commission Order, submit written certification, as described in Ordering Provision No. 1.1 below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 1.c.
- e. Within 60 days after the effective date of the Commission Order:
 - i. [Not required];
 - ii. Provide an up-to-date map of the distribution system showing the location of all valves and mains, as required by 30 Tex. Admin. Code §290.46;
 - iii. Compile and maintain an up-to-date chemical and microbiological monitoring plan, in accordance with 30 Tex. Admin. Code § 290.121;
 - iv. Compile and keep on file for operator review and reference a thorough plant operations manual, in accordance with 30 Tex. Admin. Code § 290.42; and

- v. Provide a secure enclosure for the hypochlorination solution container and pump to protect them from adverse weather conditions and vandalism, in accordance with 30 Tex. Admin. Code § 290.42.
- f. Within 75 days after the effective date of the Commission Order, submit written certification, as described in Ordering Provision No. 1.l below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 1.e.
- g. Within 90 days after the effective date of the Commission Order:
 - i. Secure a sanitary control easement that covers all property within 150 feet of the well, in accordance with 30 Tex. Admin. Code § 290.41; [and]
 - ii. [Not required]
- h. Within 105 days after the effective date of the Commission Order, submit written certification, as described in Ordering Provision No. 1.l below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 1.g.
- i. Within 120 days after the effective date of the Commission Order:
 - i. [Not Required]; [and]
 - ii. Provide an all-weather access road to the well site, in accordance with 30 Tex. Admin. Code § 290.41.

- j. Within 135 days after the effective date of the Commission Order, submit written certification, as described in Ordering Provision No. 1.l below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 1.i.
- k. Within 180 days after the effective date of the Commission Order, provide a total well production capacity of 1.5 gpm per connection, in accordance with 30 TEX. ADMIN. CODE § 290.45.
- l. Within 195 days after the effective date of the Commission 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. 1.k. The certifications required in Ordering Provisions 1.b, 1.d, 1.f., 1.h.,1.j, and 1.l shall be notarized by a State of Texas Notary Public and include the following certification language:

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:

Water Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Ave., Stc. H
Houston, Texas 77023-1452

2. Within 60 days after the effective date of this Order, Respondent shall pay an administrative penalty in the amount of \$3,748 for the violations set forth above. The check rendered to pay the penalty imposed by this Order shall be made out to “TCEQ” and shall be sent with the notation “Re: Mostafa Solimon TCEQ Docket No. 2010-0222-PWS-E” to:

Financial Administration Division, Revenues Section
Attention: Cashier’s Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

3. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the

Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Commission Order.

4. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.
5. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and Texas Government Code § 2001.144.
6. As required by Texas Water Code § 7.059, the Commission's Chief Clerk shall forward a copy of this Order to Respondent.
7. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph D., Chairman

For the Commission