

State Office of Administrative Hearings



Cathleen Parsley
Chief Administrative Law Judge

August 25, 2011

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

**Re: SOAH Docket No. 582-10-5983; TCEQ Docket No. 2010-0222-PWS-E; In Re:
Mostafa A. Soliman d/b/a Willowbrook Subdivision**

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than September 14, 2011. Any replies to exceptions or briefs must be filed in the same manner no later than September 26, 2011.

This matter has been designated **TCEQ Docket No.; 2010-0222-PWS-E SOAH Docket No. 582-10-5983**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at <http://www10.tceq.state.tx.us/epic/efilings/> or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

A handwritten signature in black ink, appearing to read "H. D. Card", written over a horizontal line.

Henry D. Card
Administrative Law Judge

HDC/lh
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE

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SERVICE LIST

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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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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MOSTAFA A. SOLIMON D/B/A WILLOWBROOK
SUBDIVISION

**SOAH DOCKET NO. 582-10-5983
TCEQ DOCKET NO. 2010-0222-PST-E**

EXECUTIVE DIRECTOR OF THE	§	BEFORE THE STATE OFFICE
TEXAS COMMISSION ON	§	
ENVIRONMENTAL QUALITY,	§	
Petitioner	§	
	§	
VS.	§	OF
	§	
MOSTAFA A. SOLIMON D/B/A	§	
WILLOWBROOK SUBDIVISION,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Petitioner, the Executive Director of the Texas Commission on Environmental Quality (TCEQ or the Commission), seeks an administrative penalty of \$4,095 and corrective action from Respondent, Mostafa Solimon dba Willowbrook Subdivision, for alleged violations of the Texas Health and Safety Code, the Commission's rules, and a previous Agreed Order. Dr. Solimon denies the violations and requests that the Commission not assess any penalty or order any action. The Administrative Law Judge (ALJ) finds that Dr. Solimon committed nine of the twelve alleged violations and recommends that he be assessed an administrative penalty of \$1,249 and be required to take the proposed corrective actions that relate to the violations committed.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Commission has jurisdiction over this matter under TEX. HEALTH & SAFETY CODE ch. 341. The State Office of Administrative Hearings (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.

The Executive Director sent Dr. Solimon his Preliminary Report and Petition (EDPRP) on April 19, 2010. The Commission received Dr. Solimon's one-page reply to the EDPRP, denying any violations, on July 16, 2010, followed by a more detailed response on September 11, 2010.

Notice of the SOAH hearing was sent August 25, 2010, which was more than ten days before the hearing, as required by TEX. GOV'T CODE ANN. § 2001.051. 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, pursuant to TEX. GOV'T CODE ANN. § 2001.052.

After some continuances, the hearing on the merits was convened June 30, 2011, before the undersigned ALJ. The Executive Director and Dr. Solimon 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.

II. DISCUSSION

A. Factual Background

Dr. Solimon owns and operates a public water system (the Facility) located at 31902 Willowbrook Street, Waller, Texas, serving the Willowbrook Subdivision. The Facility has approximately 19-22 active service connections and serves at least 25 people per day for at least 60 days per year.

On December 14, 2009, TCEQ Investigators Stacy Marhofer and Barry Price conducted an inspection of the Facility. According to the Investigation Report, Ms. Marhofer called Dr. Solimon's home number three times and his work number once before the inspection and left messages each time. Dr. Solimon was not present at the inspection and stated he had not been contacted.

The investigation was to determine if the Facility was in compliance with Agreed Order No. 2005-0150-MLM-E, issued on November 6, 2006.¹

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 Dr. Solimon 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 \$4,095.²

Mr. Price testified for the Executive Director that each of the alleged violations was present during the investigators' inspection of the system and that the proposed corrective actions were necessary. Stephen Thompson testified for the Executive Director that the proposed administrative penalties were in accordance with the Commission's administrative penalty policy.

B. Alleged Violations and Proposed Penalties

<u>Number</u>	<u>Rule/Statute/Order</u>
1	30 TAC § 290.46(e)(3)(A); TEX. HEALTH & SAFETY CODE § 341.033(a)

The Executive Director alleged that Dr. Solimon failed to ensure that the Facility is at all times operated under the direct supervision of a water works operator who holds a valid class "D" or higher license. Specifically, at the time of the investigation, it was documented that the Facility was being operated by an individual (Dr. Solimon) with an expired license. The Executive Director proposed a penalty of \$139.

Dr. Solimon agreed that he held a class D operator's license that was expired. He explained that he had taken many of the required classes and was planning to take the license examination.

¹ See Executive Director Ex. 2.

² See Executive Director Ex. 6.

The ALJ finds that the Facility was not operated under the direct supervision of a water works operator who held a valid class “D” or higher license. He concludes that the Facility violated 30 TAC § 290.46(e)(3)(A) and TEX. HEALTH & SAFETY CODE § 341.033, and recommends that the proposed administrative penalty be assessed.

<u>Number</u>	<u>Rule/Statute/Order</u>
2	30 TAC § 290.110(b)(4); TEX. HEALTH & SAFETY CODE § 341.0315(c)

The Executive Director alleged that 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. Specifically, 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. The Executive Director proposed a penalty of \$347.

Dr. Solimon stated he had maintained adequate disinfectant levels. In his September 2010 answer to the EDPRP, he provided Disinfectant Level Quarterly Reports for 2009 through the second quarter of 2010 in support of his contention.³ Mr. Price testified that the test was indeed conducted at the time of the inspection and showed no chlorine residual.

The ALJ finds that Mr. Price’s testimony was credible and that the investigators’ testing at the time of the investigation showed no chlorine residual. He concludes that the Facility violated 30 TAC § 290.110(b)(4) and TEX. HEALTH & SAFETY CODE § 341.0315(c), and recommends that the proposed administrative penalty be assessed.

<u>Number</u>	<u>Rule/Statute/Order</u>
3	30 TAC § 290.46(m)

The Executive Director alleged Dr. Solimon failed to initiate maintenance and housekeeping practices to ensure a good general appearance of the Facility. Specifically, at the time of the

³ See Respondent Ex. 2(c).

investigation, it was documented that 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. The Executive Director recommended a penalty of \$69.

Dr. Solimon stated that the grass at the Facility was mowed and the premises well kept. He provided a photograph of the mowed area. On cross-examination, he said the photograph was from September of 2009. In rebuttal, Mr. Price presented photographs from the December 14, 2009, inspection showing overgrown vegetation and debris at the Facility.⁴

The ALJ finds that overgrown vegetation and debris existed at the Facility at the time of the investigation. He concludes that the Facility violated 30 TAC § 290.46(m) and recommends that the proposed administrative penalty be assessed.

<i>Number</i>	<i>Rule/Statute/Order</i>
4	30 TAC § 290.41(c)(1)(F) and TCEQ Agreed Order Docket No. 2005-0150-MLM-E, Ordering Provision No. 2.b.i

The Executive Director alleged Dr. Solimon failed to secure a sanitary control easement covering all property within 150 feet of the well. He recommended a penalty of \$69.

Dr. Solimon stated he had sent sanitary control easement requests to the owners of all lots within 150 feet of the Facility, but had not received replies from five of them.⁵ He further stated he would apply for an exemption. He had not done so at the time of the inspection.

The ALJ finds that the Facility did not have the required sanitary control easement or an exemption. He concludes that 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, and recommends that the proposed administrative penalty be assessed.

⁴ Respondent Ex. 2(d); Executive Director Ex. 9.

⁵ Respondent Ex. 2.

<u>Number</u>	<u>Rule/Statute/Order</u>
5	30 TAC § 290.45(b)(1)(A)(i) and TCEQ Agreed Order Docket No. 2005-0150-MLM-E, Ordering Provision No. 2.c.i

The Executive Director contended the Facility failed to provide a well production capacity of 1.5 gallons per minute (“gpm”) per connection. Specifically, at the time of the investigation, it was documented that the Facility was required to provide 33 gpm of well capacity for its 22 active connections. However, according to the investigative report, the Facility was at that time providing 25 gpm, which would be a 24% deficiency. The Executive Director recommended a penalty of \$2,499.

Dr. Solimon stated the well has a capacity of 50 gpm, which is within the requirements of the rule and the previous Order. He provided an invoice from 1994 showing a well capacity of 50 gpm.⁶ He also stated that the water system now has only 19, rather than 22, active connections. On cross-examination, Mr. Price stated he and Ms. Marhofer had not examined the well, because Dr. Solimon was not present to let them in. Instead, they used the last rating that had been performed by the Commission.

The ALJ finds that the preponderance of the evidence shows that the well has a capacity of 50 gpm, which is within the requirements of the rule. He concludes that the Facility did not violate 30 TAC § 290.45(b)(1)(A)(i) of TCEQ Agreed Order Docket No. 2005-0150-MLM-E, Ordering Provision No. 2.c.i, and recommends that no proposed administrative penalty be assessed for the alleged violation.

<u>Number</u>	<u>Rule/Statute/Order</u>
6	30 TAC § 290.45(b)(1)(A)(ii) and TCEQ Agreed Order Docket No. 2005-0150-MLM-E, Ordering Provision No. 2.c.ii

The Executive Director contended the Facility failed to provide a pressure tank capacity of 50 gallons per connection. Specifically, at the time of the investigation, it was documented that the

⁶ Respondent Ex. 2(f).

Facility was required to provide 1,100 gallons of pressure tank capacity for 22 active connections. However, according to the Executive Director, the Facility was providing 1,050 gallons, which was a 5 percent deficiency. The Executive Director recommended a penalty of \$69.

In his September 2010 response, Dr. Solimon stated, without further elaboration, that the capacity of the two tanks is sufficient for 50 gallons per connection and that he would add a third tank in the future. As was discussed briefly above, he testified at the hearing that the water system has only 19, rather than 22, active connections. The Facility's monthly reports for November and December 2009 showed 20 connections at that time, which would require only 1,000 gallons of pressure tank capacity.⁷

The previous Commission Order, issued in 2005, states the Facility has approximately 22 connections. The ALJ finds the more recent operating reports, combined with Dr. Solimon's testimony, to be a more reliable indicator of the actual number of active connections at the time of the investigation. He concludes that 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, and recommends that no proposed administrative penalty be assessed for the alleged violation.

<u>Number</u>	<u>Rule/Statute/Order</u>
7	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

The Executive Director alleged that Dr. Solimon failed to develop and maintain an up-to-date chemical and microbiological monitoring plan for the Facility, maintain an accurate and up-to-date map of the distribution system so that valves and mains may be easily located during emergencies, and keep on file and make available for review an up-to date record of water works operations and maintenance activities for operator review and reference. Specifically, at the time of the investigation, the following records were not available for review: an up-to-date chemical and

⁷ Respondent Ex. 2(j).

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.

This alleged violation encompasses most of the record-keeping deficiencies identified by the Commission investigators. The Executive Director recommended a penalty of \$69.

Dr. Solimon asserted he maintained his records properly and that this violation was due to his not having been informed of the inspection. In his September 2010 response, he provided copies of the Facility monitoring plan, the system map, and monthly operations reports for 2009 and August 2010.⁸

The ALJ finds the investigators attempted several times to inform Dr. Solimon of the inspection. The rule requires a Facility to allow entry to Commission personnel and to make the Facility's records available for review. Because Dr. Solimon was not present, the investigators were unable to enter the Facility and review the Facility's records. Moreover, although given the opportunity to respond promptly to the investigators' findings, Dr. Solimon did not offer documents in response until September of 2010, almost ten months later. The ALJ concludes that 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., and recommends that the proposed administrative penalty be assessed.

⁸ Respondent Ex. 2(h), (i), and (j).

<u>Number</u>	<u>Rule/Statute/Order</u>
8	30 TAC § 290.46(t)

The Executive Director alleged that Dr. Solimon failed to post a legible sign at the Facility that contains the name of the water supply and the emergency telephone numbers where a responsible official can be contacted. The Executive Director recommended an administrative penalty of \$139.

Dr. Solimon testified that the Facility had a sign, and presented photographs of the sign into evidence. Mr. Price testified that the Facility had no sign at the time of the investigation; the Executive Director presented photographs of the Facility on the day of the investigation into evidence.⁹ Dr. Solimon conceded someone else might have taken the sign down.

The ALJ finds that Mr. Price's evidence best shows the condition of the Facility at the time of the inspection and that the Facility lacked the required sign at that time. The ALJ concludes that the Facility violated 30 TAC §§ 290.46(t), and recommends that the proposed administrative penalty be assessed.

<u>Number</u>	<u>Rule/Statute/Order</u>
9	30 TAC § 290.42(l)

The Executive Director contended the Facility failed to compile and maintain a thorough plant operations manual for operator review and reference. The Executive Director recommended a penalty of \$139.

Dr. Solimon did not address this alleged violation. The ALJ finds the Facility failed to compile and maintain a thorough plant operations manual. He concludes the Facility violated 30 TAC §§ 290.42(l), and recommends the proposed administrative penalty be assessed.

⁹ Respondent Ex. 2(1); Executive Director Ex. 9.

<u>Number</u>	<u>Rule/Statute/Order</u>
10	30 TAC § 290.46(m)(1)(B)

The Executive Director alleged Dr. Solimon failed to conduct annual inspections of the Facility's two pressure tanks. Specifically, at the time of the investigation, the Executive Director contended it was documented that the inspections of the pressure tanks were conducted by an unlicensed individual. The Executive Director recommended a penalty of \$278.

30 TAC § 290.46(m)(1) states:

- (1) Each of the system's ground, elevated, and pressure tanks shall be inspected annually by water system personnel or a contracted inspection service.
 - (A) Ground and elevated storage tank inspections must determine that the vents are in place and properly screened, the roof hatches closed and locked, flap valves and gasketing provide adequate protection against insects, rodents, and other vermin, the interior and exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in a watertight condition.
 - (B) Pressure tank inspections must determine that the pressure release device and pressure gauge are working properly, the air-water ratio is being maintained at the proper level, the exterior coating systems are continuing to provide adequate protection to all metal surfaces, and the tank remains in watertight condition. Pressure tanks provided with an inspection port must have the interior surface inspected every five years.
 - (C) All tanks shall be inspected annually to determine that instrumentation and controls are working properly.

The rule does not require that inspection of the tanks be performed by a licensed individual, only by water system personnel. Other than the assertion in the Investigation Report, the evidence in the record did not show that Dr. Solimon failed to conduct the required inspections.

The ALJ concludes that the Facility did not violate 30 TAC § 290.46(m)(1)(B), and recommends that the proposed administrative penalty not be assessed.

<u>Number</u>	<u>Rule/Statute/Order</u>
11	30 TAC § 290.42(e)(5)

The Executive Director contended that the Facility failed to house the hypochlorination solution container and pump in a secure enclosure to protect them from adverse weather conditions and vandalism. The Executive Director recommended a penalty of \$139.

The photographs submitted by the Executive Director show the hypochlorination system solution and pump in plain sight behind a chain link fence that would not provide adequate security. Dr. Solimon described those items as being underneath a temporary wooden covering and stated he plans to build a room to house them.¹⁰

The ALJ finds that the hypochlorination solution container and pump were not housed in a secure enclosure. He concludes that the Facility violated 30 TAC § 290.42(e)(5), and recommends that the proposed administrative penalty be assessed.

<u>Number</u>	<u>Rule/Statute/Order</u>
12	30 TAC § 290.41(c)(3)(P)

The Executive Director alleged that Dr. Solimon failed to provide an all-weather access road to the well site. Specifically, at the time of the investigation, it was documented that the well site was only accessible from the main road by walking through a ditch. The Executive Director recommended a penalty of \$139.

Dr. Solimon testified that there is a road from Lot Number 1 in the subdivision to the well site. However, Mr. Price's testimony established that the road is not an all-weather road, as required by the rule. The ALJ concludes that the Facility violated 30 TAC §§ 290.41(c)(3)(P), and recommends that the proposed administrative penalty be assessed.

¹⁰ Executive Director Ex. 9; Respondent Ex. 2(o).

In summary, the ALJ finds Dr. Solimon committed nine of the 12 alleged violations. He recommends he be assessed an administrative penalty of \$1,249.

By failing to respond to the Executive Director's discovery on the issue, Dr. Solimon waived any claim that he was unable to pay the proposed administrative penalty. 30 TAC § 70.8(b).

C. Proposed Corrective Actions

The Executive Director recommended that Dr. Solimon be required to implement certain corrective measures, which were set out in Paragraph 13 of the EDPRP. After reviewing Dr. Solimon's submissions, the Executive Director determined that some of the EDPRP recommendations should not be required. The corrective measures ultimately recommended by the Executive Director are set out below. The ALJ recommends the Commission require all those corrective measures, except those related to violations that were alleged but not proved.

13. The Executive Director recommends that Dr. Solimon be required to 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. 13.1 below, and include detailed supporting documentation including photographs, receipts,

and/or other records to demonstrate compliance with Ordering Provision No. 13.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. 13.1 below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 13.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. 13.l below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 13.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. Conduct inspections of the Facility's two pressure tanks, in accordance with 30 Tex. Admin. Code § 290.46.
- h. Within 105 days after the effective date of the Commission Order, submit written certification, as described in Ordering Provision No. 13.l below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 13.g.
- i. Within 120 days after the effective date of the Commission Order:
 - i. Provide a total pressure tank capacity of at least 50 gallons per connection, in accordance with 30 Tex. Admin. Code § 290.45; 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. 13.l below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 13.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. 13.k. 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

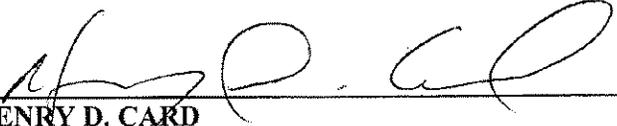
with a copy to:

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

The ALJ finds Dr. Solimon should be ordered to comply with all those proposed corrective actions except 13.g.ii (conduct inspections of the two pressure tanks); 13.i.ii (provide a total pressure tank capacity of at least 50 gallons per connection); and 13.k. (provide a total well production capacity of 1.5 gpm per connection). Dr. Solimon was not in violation of those rules; therefore, those ordering provisions should not be included. For ease of comparison, in the Proposed Order,

the ALJ has maintained the lettering system used by the Executive Director in the EDPRP, noting which proposed subsections are not required. The omission of those corrective measures from the Commission's Order should not be construed as exempting Dr. Solimon from continued compliance with those rules.

SIGNED August 25, 2011.



HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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 50 gallons per minute (gpm).
20. The well at the Facility has 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 did not violate 30 TAC § 290.45(b)(1)(A)(i) or 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 \$1,249 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. 1.1 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. 1.1 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. 1.1 below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 1.i.

k. [Not Required]

l. 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., Ste. 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 \$1,249 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