

Executive Summary – Enforcement Matter – Case No. 59225

City of Marlin

RN102886892

Docket No. 2020-0568-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:

No

Location(s) Where Violation(s) Occurred:

City of Marlin PWS, located 1.7 miles from the intersection of Farm-to-Market Road 147 and Highway 6 near Marlin, Falls County

Type of Operation:

Public water supply

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: December 17, 2021

Comments Received: No

Penalty Information

Total Penalty Assessed: \$2,325

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

Supplemental Environmental Project (“SEP”) Conditional Offset: \$2,325

Name of SEP: Public Water Supply Improvements (Compliance)

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - High

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: March 23, 2020 through April 3, 2020

Date(s) of NOE(s): April 3, 2020

Executive Summary – Enforcement Matter – Case No. 59225

City of Marlin

RN102886892

Docket No. 2020-0568-PWS-E

Violation Information

Failed to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids based on the locational running annual average [30 TEX. ADMIN. CODE § 290.115(f)(1) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

1. The Order will require the Respondent to implement and complete a SEP (see SEP Attachment A).
2. The Order will also require the Respondent to:
 - a. Within 365 days, return to compliance with the maximum contaminant level for haloacetic acids based on the locational running annual average; and
 - b. Within 380 days, submit written certification to demonstrate compliance with a.

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Miles Wehner, Enforcement Division, Enforcement Team 8, MC 219, (512) 239-2813; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

TCEQ SEP Coordinator: Betty Sanders, SEP Coordinator, Litigation Division, MC 175, (512) 239-3992

Respondent: The Honorable Carolyn Lofton, Mayor, City of Marlin, 101 Fortune Street, Marlin, Texas 76661

Cedric W. Davis, City Manager, City of Marlin, 101 Fortune Street, Marlin, Texas 76661

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision September 1, 2019

DATES	Assigned	6-Apr-2020	Screening	13-Apr-2020	EPA Due	30-Jun-2020
	PCW	17-Apr-2020				

RESPONDENT/FACILITY INFORMATION	
Respondent	City of Marlin
Reg. Ent. Ref. No.	RN102886892
Facility/Site Region	9-Waco
Major/Minor Source	Major

CASE INFORMATION				
Enf./Case ID No.	59225	No. of Violations	1	
Docket No.	2020-0568-PWS-E	Order Type	Findings	
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes	
Multi-Media		Enf. Coordinator	Miles Wehner	
		EC's Team	Enforcement Team 8	
Admin. Penalty \$ Limit	Minimum	\$50	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,500
---	-------------------	---------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	55.0%	Adjustment	Subtotals 2, 3, & 7	\$825
---------------------------	-------	------------	--------------------------------	-------

Notes: Enhancement for three NOVs with the same/similar violations and two orders containing a denial of liability.

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

Notes: The Respondent does not meet the culpability criteria.

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

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

Total EB Amounts: \$562
 Estimated Cost of Compliance: \$2,549
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,325
-----------------------------	-----------------------	---------

OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
---	------	------------	-----

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: [Empty box]

Final Penalty Amount	\$2,325
-----------------------------	---------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,325
-----------------------------------	-------------------------------	---------

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

Reduces the Final Assessed Penalty by the indicated percentage.

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$2,325
------------------------	---------

Screening Date 13-Apr-2020

Docket No. 2020-0568-PWS-E

PCW

Respondent City of Marlin

Policy Revision 4 (April 2014)

Case ID No. 59225

PCW Revision September 1, 2019

Reg. Ent. Reference No. RN102886892

Media Public Water Supply

Enf. Coordinator Miles Wehner

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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	2	40%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
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) 55%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for three NOVs with the same/similar violations and two orders containing a denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 55%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 55%

Screening Date 13-Apr-2020
Respondent City of Marlin
Case ID No. 59225
Reg. Ent. Reference No. RN102886892
Media Public Water Supply
Enf. Coordinator Miles Wehner

Docket No. 2020-0568-PWS-E

PCW

Policy Revision 4 (April 2014)
PCW Revision September 1, 2019

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.115(f)(1) and Tex. Health and Safety Code § 341.0315(c)

Violation Description
 Failed to comply with the maximum contaminant level ("MCL") of 0.060 milligram per liter ("mg/L") for haloacetic acids ("HAA5") based on the locational running annual average. Specifically, the locational running annual average concentrations of HAA5 for Stage 2 Disinfection Byproducts at Site 2 were 0.065 mg/L for the third quarter of 2019, 0.065 mg/L for the fourth quarter of 2019, and 0.074 mg/L for the first quarter of 2020.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual		x		30.0%
	Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

Matrix Notes Exceeding the MCL for HAA5 caused persons served by the Facility to be exposed to a significant amount of contaminants which did not exceed levels protective of human health.

Adjustment \$3,500

\$1,500

Violation Events

Number of Violation Events 1 274 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

Violation Base Penalty \$1,500

One annual event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

Before NOE/NOV NOE/NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	

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

Violation Subtotal \$1,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$562

Violation Final Penalty Total \$2,325

This violation Final Assessed Penalty (adjusted for limits) \$2,325

Economic Benefit Worksheet

Respondent City of Marlin
Case ID No. 59225
Reg. Ent. Reference No. RN102886892
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	Costs Saved	EB Amount
------------------	-----------	---------------	------------	-----	----------------	-------------	-----------

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$2,549	30-Sep-2019	22-Nov-2022	3.15	\$27	\$535	\$562
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 cost includes the estimated amount to investigate, identify, and implement the necessary corrective actions to return to compliance with the MCL for HAA5, calculated from the last day of the first quarter of noncompliance to the estimated date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$2,549

TOTAL \$562



Compliance History Report

Compliance History Report for CN600506604, RN102886892, Rating Year 2019 which includes Compliance History (CH) components from September 1, 2014, through August 31, 2019.

Customer, Respondent, or Owner/Operator:	CN600506604, City of Marlin	Classification:	SATISFACTORY	Rating:	2.94
Regulated Entity:	RN102886892, CITY OF MARLIN	Classification:	HIGH	Rating:	0.00
Complexity Points:	1	Repeat Violator:	NO		
CH Group:	08 - Sewage Treatment Facilities				
Location:	LOCATED 1.7 MILES FROM THE INTERSECTION OF FARM-TO-MARKET ROAD 147 AND HIGHWAY 6 NEAR MARLIN, FALLS COUNTY TEXAS				
TCEQ Region:	REGION 09 - WACO				
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0730002				

Compliance History Period:	September 01, 2014 to August 31, 2019	Rating Year:	2019	Rating Date:	09/01/2019
Date Compliance History Report Prepared:	June 17, 2020				
Agency Decision Requiring Compliance History:	Enforcement				
Component Period Selected:	June 17, 2015 to June 17, 2020				

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

Name: Miles Wehner **Phone:** (512) 239-2813

Site and Owner/Operator History:

- | | |
|--|-----|
| 1) Has the site been in existence and/or operation for the full five-year compliance period? | YES |
| 2) Has there been a (known) change in ownership/operator of the site during the compliance period? | NO |

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

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

- Effective Date: 07/18/2017 ADMINORDER 2017-0405-PWS-E (1660 Order-Agreed Order With Denial)

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.44(c)

Description: Failed to ensure that new waterlines are a minimum of two inches in diameter. Specifically, a 3/4 inch diameter waterline was documented along County Road 2878.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.44(a)(4)

Description: Failed to install water transmission and distribution lines below the frost line and in no case less than 24 inches below the ground surface. Specifically, a waterline located along County Road 2878 was above the ground surface.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(d)(2)(B)
30 TAC Chapter 290, SubChapter F 290.110(b)(4)
5A THSC Chapter 341, SubChapter A 341.0315(c)

Description: Failed to operate the disinfection equipment to maintain a minimum disinfectant residual of 0.5 milligrams per liter ("mg/L") total chlorine throughout the distribution system at all times. Specifically, on October 19, 2016, the total chlorine residual at a flush valve on the corner of County Road 2874 and County Road 2876 measured 0.08 mg/L.
- Effective Date: 05/04/2018 ADMINORDER 2016-1306-PWS-E (1660 Order-Agreed Order With Denial)

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(d)(2)(B)
30 TAC Chapter 290, SubChapter F 290.110(b)(4)
5A THSC Chapter 341, SubChapter A 341.0315(c)

Description: Failed to operate the disinfection equipment to maintain a minimum disinfectant residual of 0.5 milligrams per

liter ("mg/L") total chlorine throughout the distribution system at all times. Specifically, on November 19, 2015, the total chlorine residual at a fire hydrant at the intersection of Commerce Street and Tiller Street was 0.18 mg/L.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.111(f)(2)(D)(iii)

Description: Failed to conduct direct integrity tests on each membrane unit at least once every seven days.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.111(f)(2)(D)(vi)

Description: Failed to remove from service any membrane unit that fails a direct integrity test. Specifically, both membrane units failed direct integrity testing during the investigation and remained in service.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.111(f)(2)(C)

Description: Failed to continuously monitor the quality of the water produced by each membrane unit and record the monitoring results at least once every five minutes. Specifically, the turbidity of the individual filter effluent ("IFE") was only recorded every 15 minutes.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.111(f)(3)(D)(ii)

Description: Failed to conduct grab sampling every four hours in the event the Facility's continuous turbidity monitoring equipment malfunctions, but not for more than 14 working days.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.39(l)(5)

Description: Failed to comply with the site-specific requirements for water systems granted an exception. Specifically, by letter dated January 29, 2010, an exception was granted which includes a condition that the maximum settled water turbidity level be 3.0 nephelometric turbidity units ("NTU") or less in at least 95% of the samples each month, however, during the months of July through October 2015, the turbidity levels exceeded this threshold.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(6)

Description: Failed to maintain all pumps, motors, valves, and other mechanical devices in good working condition. Specifically, there was excessive rust on the weirs on clarifier 100, the clarifier mixing motors on both individual clarifiers were not operational, and neither of the lift stations' pumps were operational.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(2)(F)

5A THSC Chapter 341, SubChapter A 341.015(c)

Description: Failed to provide a service pump capacity that provides each pump station or pressure plane with two or more pumps. Specifically, two of the three high service pumps at the treatment plant pump station were not installed.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(n)(1)

Description: Failed to maintain accurate and up-to-date detailed as-built plans or record drawings and specifications for the treatment plant.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(B)(iii)

Description: Failed to calibrate the two on-line turbidimeters with primary standards at least once every 90 days.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(s)(2)(B)(iv)

Description: Failed to check the calibration of the two on-line turbidimeters at least once each week with a primary standard, a secondary standard, or the manufacturer's proprietary calibration confirmation device or by comparing the results from the on-line unit with the results from a properly calibrated benchtop unit.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter A 290.46(s)(2)(F)

Description: Failed to verify the performance of direct integrity testing equipment in a manner and schedule approved by the Executive Director. Specifically, the performance of the direct integrity testing equipment was not being verified: the gauge and electric pressure readings used by the system were not reading the same.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 2	July 15, 2015	(1278933)
Item 3	August 11, 2015	(1285136)
Item 4	October 13, 2015	(1298400)
Item 7	December 28, 2016	(1386342)
Item 9	August 04, 2017	(1429876)

Item 12	June 01, 2018	(1486292)
Item 13	December 11, 2018	(1543374)
Item 14	February 12, 2019	(1540913)
Item 16	August 26, 2019	(1591276)
Item 18	March 02, 2020	(1631063)
Item 19	April 16, 2020	(1644621)

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

- 1 Date: 10/22/2019 (1639902)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.115(f)(1)
Description: HAA5 LRAA MCL 3Q2019 - During the 3rd quarter of 2019 the system violated the maximum contaminant level for haloacetic acids with a LRAA of 0.065 mg/L at 130 Royal Drive, Marlin (DBP2-02).

- 2 Date: 01/28/2020 (1639902)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.115(f)(1)
Description: HAA5 LRAA MCL 4Q2019 - During the 4th quarter of 2019 the system violated the maximum contaminant level for haloacetic acids with a LRAA of 0.065 mg/L at 128 Royal Drive, Marlin (DBP2-02).

- 3 Date: 03/19/2020 (1639902)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.115(f)(1)
Description: HAA5 LRAA MCL 1Q2020 - During the 1st quarter of 2020 the system violated the maximum contaminant level for haloacetic acids with a LRAA of 0.074 mg/L at 128 Royal Drive, Marlin (DBP2-02).

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CITY OF MARLIN
RN102886892**

**§
§
§
§
§**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2020-0568-PWS-E**

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the City of Marlin (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 1.7 miles from the intersection of Farm-To-Market Road 147 and Highway 6 near Marlin, Falls County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 2,471 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(71).
2. During a record review conducted on March 23, 2020 through April 3, 2020, an investigator documented that the locational running annual average concentrations of haloacetic acids ("HAA5") for Stage 2 Disinfection Byproducts at Site 2 were 0.065 milligram per liter ("mg/L") for the third quarter of 2019, 0.065 mg/L for the fourth quarter of 2019, and 0.074 mg/L for the first quarter of 2020.

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 0.060 mg/L for HAA5 based on the locational running annual average, in violation of 30 TEX. ADMIN. CODE § 290.115(f)(1) 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 \$2,325 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). Pursuant to TEX. WATER CODE § 7.067, \$2,325 of the penalty shall be conditionally offset by the Respondent's timely and satisfactory completion of a Supplemental Environmental Project ("SEP") as defined in the attached SEP Agreement ("Attachment A" - incorporated herein by reference). The Respondent's obligation to pay the conditionally offset portion of the penalty shall be discharged upon full compliance with all the terms and conditions of this Order, which includes the timely and satisfactory completion of all provisions of the SEP Agreement, as determined by the Executive Director.

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: City of Marlin, Docket No. 2020-0568-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 implement and complete an SEP as set forth in Conclusion of Law No. 4. The amount of \$2,325 of the assessed penalty is conditionally offset based on the Respondent's implementation and completion of the SEP pursuant to the terms of the SEP Agreement, as defined in Attachment A. Penalty payments for any portion of the SEP deemed by the Executive Director as not complete shall be paid within 30 days after the date the Executive Director demands payment.
3. The Respondent shall undertake the following technical requirements:
 - a. Within 365 days after the effective date of this Order, return to compliance with the MCL for HAA5 based on the locational running annual average, in accordance with 30 TEX. ADMIN. CODE § 290.115.
 - b. Within 380 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 3.a. 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:

Drinking Water Special Functions Section Manager
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. All relief not expressly granted in this Order is denied.
5. 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.
6. The Respondent fails to comply with Ordering Provision No. 2 in this Order within the prescribed schedule, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.

12. 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

3/2/2022

Date

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

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

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

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



Signature

11-14-2021

Date

Cedric K. Davis Sr.

Name (Printed or typed)
Authorized Representative of
City of Marlin

City Manager

Title

If mailing address has changed, please check this box and provide the new address below:

Attachment A

Docket Number: 2020-0568-PWS-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent:	City of Marlin
Penalty Amount:	Two Thousand Three Hundred Twenty-Five Dollars (\$2,325)
SEP Offset Amount:	Two Thousand Three Hundred Twenty-Five Dollars (\$2,325)
Type of SEP:	Compliance
Project Name:	<i>Public Water Supply Improvements</i>
Location of SEP:	Falls County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset the administrative Penalty Amount assessed in this Agreed Order for Respondent to perform a Supplemental Environmental Project (“SEP”).

Respondent is a Local Government that qualifies under Texas Water Code § 7.067 to apply the SEP Offset Amount set forth above to correct violations at its public water supply which are described in this Agreed Order.

1. Project Description

A. Project

Respondent hired a contractor to purchase and install an eclipse 9700 2" red portable automatic flusher with 2" multi-directional diffuser to the hydrant located at Ward Street and Royal Drive in Marlin. The project will help improve and flush aged water in the aged distribution system, thereby reducing disinfection byproduct formation. Specifically, the SEP Offset Amount was used for materials, supplies, and equipment for automatic flusher with diffuser (the “Project”). Respondent hired qualified contractors to perform the Project. The SEP was performed in accordance with all federal, state, and local environmental laws and regulations.

Respondent used the SEP Offset Amount only for the direct cost of implementing the Project, including supplies, materials, and equipment rentals, as listed in Subsection C. Expenses, below. No portion of the SEP Offset Amount was spent on administrative costs, including but not limited to operating costs, reporting expenses, handling of expenses, project coordination, liability, or equipment breakdowns.

Respondent’s signature affixed to the attached Agreed Order certifies that Respondent had no prior commitment to perform this Project and that the SEP was performed solely as part of the terms of settlement in this enforcement action.

B. Environmental Benefit

This SEP will provide access to safe drinking water. Safe, reliable drinking water is necessary for human health and household sanitation. Untreated water may harbor bacteria, viruses, protozoa (parasitic organisms), helminths (intestinal worms), and bioaerosols (inhalable molds and fungi). The diseases they may cause range in severity from like gastroenteritis to life-threatening ailments such as cholera, dysentery, infectious hepatitis, and severe gastroenteritis. Safe water is also necessary in the home for bathing, flushing toilets, washing hands, and cooking.

C. Expenses

Respondent spent at least the SEP Offset Amount to complete the project described in Section 1, above, and complied with all other provisions of this SEP. Respondent understood that it may have cost more than the SEP Offset Amount to complete the Project.

Expenses

Item	Quantity	Cost	Units	Total
Eclipse 9700 2" Red Portable Automatic Flusher	1	\$2,299	Each	\$2,299
2" Multi-Directional Diffuser	1	\$250	Each	\$250
Total				\$2,549

2. Records

As of March 17, 2021, Respondent provided TCEQ the following documentation as proof of completion of the proposed SEP:

1. Itemized list of expenditures and total cost of the Project;
2. Copies of invoices or receipts corresponding to the itemized list in paragraph 2.1., above;
3. Copies of cleared checks or payment records corresponding to the itemized list in paragraph 2.1., above;
4. A certified statement of SEP completion and document authentication;
5. Detailed map showing specific location of the project site(s); and
6. Dated photographs of the purchased materials and supplies; before and after work being performed during the Project; and of the completed Project.

3. **Additional Information and Access**

Respondent shall provide additional information as requested by TCEQ staff and shall allow access to all records related to the SEP Offset Amount. Respondent shall also allow representatives of the TCEQ access to the site of any work being financed in whole or in part by the SEP Offset Amount. This provision shall survive the termination of this Agreed Order.

4. **Failure to Fully Perform**

If Respondent does not perform its obligations under this Attachment A, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Sections 2 through 4 above, the Executive Director (“ED”) may require immediate payment of all or part of the SEP Offset Amount as set forth in the attached Agreed Order.

In the event the ED determines that Respondent failed to fully implement and complete the Project, Respondent shall remit payment for all or a portion of the SEP Offset Amount, as determined by the ED, and as set forth in the attached Agreed Order. After receiving notice of failure to complete the SEP, Respondent shall include the docket number of the attached Agreed Order and a note that the enclosed payment is for reimbursement of a SEP, shall make the check payable to “Texas Commission on Environmental Quality,” and shall mail it to:

Texas Commission on Environmental Quality
Litigation Division
Attention: SEP Coordinator, MC 175
P.O. Box 13087
Austin, Texas 78711-3087

5. **Publicity**

Any public statements concerning this Project made by or on behalf of Respondent must include a clear statement that **the Project was performed as part of the settlement of an enforcement action brought by TCEQ**. Such statements include advertising, public relations, and press releases.

6. **Recognition**

Respondent may not seek recognition for this project in any other state or federal regulatory program.

7. **Other SEPs by TCEQ or Other Agencies**

The SEP Offset Amount identified in this Attachment A and in the attached Agreed Order has not been, and shall not be, included as a SEP for Respondent under any other Agreed Order negotiated with TCEQ or any other agency of the state or federal government.