

TCEQ Interoffice Memorandum

To: Mary Smith, General Counsel
Ron Olson, Assistant General Counsel

Thru: JSR Jess Robinson, Senior Attorney
Litigation Division

From: JS Clayton Smith, Staff Attorney
Litigation Division

Date: August 25, 2023

**Subject: Request for Remand
September 6, 2023 Commission Agenda**
Draft Item No. 28 - Wing Dingers Texas LLC. and Christopher R. Fischer
Docket No. 2021-0200-PWS-E

The Executive Director respectfully requests that the above-referenced item be remanded to the Executive Director. Respondent's hearing request was filed on August 25, 2023.

Respondent Contact:

Christopher Fischer, Managing Member
Wing Dingers Texas LLC.
P.O. Box 798
Mineola, Texas 75773

Phone: (469) 338-6939

Email: easttexasstars@hotmail.com

Respondent has been notified of this Request for Remand. Please do not hesitate to call me at (512) 239-6224 if you have any questions regarding this matter.

cc: Ronica Scott, Enforcement Coordinator
Ross Morgan, Tyler Regional Office
Sheldon Wayne, Office of Public Interest Counsel
Michael Parrish, Enforcement Division
Leslie Gann, Enforcement Division
Stuart Beckley, Enforcement Division
Gill Valls, Office of the General Counsel
Christopher R. Fischer, Managing Member, Wing Dingers Texas LLC.

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 60331
Wing Dingers Texas LLC. and Christopher R. Fischer
RN108926569
Docket No. 2021-0200-PWS-E

Order Type:
Default Order

Media:
PWS

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
700 Northwest Loop 564, Mineola, Wood County

Type of Operation:
public water system

Other Significant Matters:
Additional Pending Enforcement Actions: None
Past-Due Penalties: None
Past-Due Fees: \$282.70
Other: None
Interested Third Parties: None

Texas Register Publication Date: July 21, 2023

Comments Received: None

Penalty Information

Total Penalty Assessed: \$250
Total Paid to General Revenue: \$0
Total Due to General Revenue: \$0 (debt discharged in bankruptcy)

Compliance History Classifications:
Person/CN - High (Wing Dingers Texas LLC.); N/A (Christopher R. Fischer)
Site/RN - High (Wing Dingers Texas LLC.); Unclassified (Christopher R. Fischer)

Major Source: No
Statutory Limit Adjustment: None
Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: October 2 through October 19, 2020
Date(s) of NOV(s): N/A
Date(s) of NOE(s): November 16, 2020

Violation Information

Failed to submit plans and specifications to the Executive Director for review and approval prior to the construction of a new public water supply [TEX. HEALTH & SAFETY CODE § 341.035(a) and 30 TEX. ADMIN. CODE § 290.39(e)(1) and (h)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 30 days connect the food service establishment to an approved public water system.
2. Within 45 days submit written certification to demonstrate compliance with Technical Requirement No. 1.
3. As an alternative to Technical Requirement Nos. 1 and 2:
 - a. Within 180 days submit plans and specifications of the Facility for review and approval.
Respond to all requests concerning the plans and specifications within 15 days after the date of such requests, or by any other deadline specified in writing.
 - b. Within 195 days submit written certification to demonstrate compliance with Technical Requirement No. 3.a.
 - c. Within 270 days obtain approval of the plans and specifications for the Facility.
 - d. Within 285 days submit written certification to demonstrate compliance with Technical Requirement No. 3.c.

Litigation Information

Date Petition(s) Filed: October 21, 2022

Date(s) of Service: October 24, 2022

Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Clayton Smith, Litigation Division, (512) 239-3400
Sheldon Wayne, Public Interest Counsel, (512) 239-6363

TCEQ Litigation Agenda Coordinator: Katherine McKenzie, Litigation Division, (512) 239-2575

TCEQ Enforcement Coordinator: Ronica Scott, Enforcement Division, (361) 825-3425

TCEQ Regional Contact: Ross Morgan, Tyler Regional Office, (903) 535-5100

Respondent Contact: Christopher R. Fischer, Managing Member, Wing Dingers Texas LLC., P.O. Box 798, Mineola, Texas 75773

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision September 1, 2019

DATES	Assigned	16-Nov-2020	Screening	26-Jan-2021	EPA Due	
	PCW	26-Jan-2021				

RESPONDENT/FACILITY INFORMATION	
Respondent	Wing Dingers Texas LLC. and Christopher R. Fischer
Reg. Ent. Ref. No.	RN108926569
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	60331	No. of Violations	1
Docket No.	2021-0200-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Ronica Rodriguez
		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	\$250
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	0.0%	Adjustment	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for compliance history.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$390
Estimated Cost of Compliance	\$5,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$250
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$250
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$250
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes:

PAYABLE PENALTY	\$250
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Screening Date 26-Jan-2021

Docket No. 2021-0200-PWS-E

PCW

Respondent Wing Dingers Texas LLC. and Christopher R. Fischer

Policy Revision 4 (April 2014)

Case ID No. 60331

PCW Revision September 1, 2019

Reg. Ent. Reference No. RN108926569

Media Public Water Supply

Enf. Coordinator Ronica Rodriguez

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

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 26-Jan-2021

Docket No. 2021-0200-PWS-E

PCW

Respondent Wing Dingers Texas LLC. and Christopher R. Fischer

Policy Revision 4 (April 2014)

Case ID No. 60331

PCW Revision September 1, 2019

Reg. Ent. Reference No. RN108926569

Media Public Water Supply

Enf. Coordinator Ronica Rodriguez

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.39(e)(1) and (h)(1) and Tex. Health & Safety Code § 341.035(a)

Violation Description Failed to submit plans and specifications to the Executive Director for review and approval prior to the construction of a new public water supply. Specifically, the Respondent was operating a business which meets the definition of a transient, noncommunity public water supply without first obtaining approval.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					0.0%
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		
100% of the rule requirements were not met.					

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 1 Number of violation days 1868

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$250

One single event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$390

Violation Final Penalty Total \$250

This violation Final Assessed Penalty (adjusted for limits) \$250

Economic Benefit Worksheet

Respondent Wing Dingers Texas LLC. and Christopher R. Fischer
Case ID No. 60331
Reg. Ent. Reference No. RN108926569
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
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Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5,000	2-Oct-2020	25-Apr-2022	1.56	\$390	n/a	\$390

Notes for DELAYED costs

The delayed cost includes the estimated amount to develop and submit as-built plans and specifications for review and approval, calculated from the investigation date 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

\$5,000

TOTAL

\$390

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Compliance History Report

Compliance History Report for CN605043082, RN108926569, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator: CN605043082, Wing Dingers Texas LLC. **Classification:** HIGH **Rating:** 0.00

Regulated Entity: RN108926569, WING DINGERS MINEOLA **Classification:** HIGH **Rating:** 0.00

Complexity Points: 0 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 700 NORTHWEST LOOP 564 IN MINEOLA, WOOD COUNTY, TEXAS

TCEQ Region: REGION 05 - TYLER

ID Number(s):
WATER QUALITY NON-PERMITTED ID NUMBER R05108926569 PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2500068

Compliance History Period: September 01, 2015 to August 31, 2020 **Rating Year:** 2020 **Rating Date:** 09/01/2020

Date Compliance History Report Prepared: May 20, 2021

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: May 20, 2016 to May 20, 2021

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

Name: Ronica Rodriguez **Phone:** (361) 825-3425

Site and Owner/Operator History:

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

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

- A. Final Orders, court judgments, and consent decrees:**
N/A
- B. Criminal convictions:**
N/A
- C. Chronic excessive emissions events:**
N/A
- D. The approval dates of investigations (CCEDS Inv. Track. No.):**
N/A
- 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.
N/A
- F. Environmental audits:**
N/A
- G. Type of environmental management systems (EMSs):**
N/A
- H. Voluntary on-site compliance assessment dates:**
N/A
- I. Participation in a voluntary pollution reduction program:**
N/A
- J. Early compliance:**
N/A
- Sites Outside of Texas:**
N/A

Component Appendices

Appendix A

All NOVs Issued During Component Period 5/20/2016 and 5/20/2021

- 1 Date: 04/12/2017 (1407532) Classification: Moderate

Self Report? NO For Informational Purposes Only

Citation: TWC Chapter 26 26.121

Description: Failure to prevent unauthorized discharge of sewage. On December 16, 2015, evidence of sewage discharging and pooling was observed behind Wing Dingers in Mineola Texas. The Texas Water Code states in TWC§26.121(a)(1) UNAUTHORIZED DISCHARGES PROHIBITED. Except as authorized by the commission, no person may discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state.

Classification: Moderate
- Self Report? NO For Informational Purposes Only

Citation: 30 TAC Chapter 285, SubChapter A 285.3(a)
5A THSC Chapter 341, SubChapter A 341.014(a)

Description: Failure to obtain a permit for an on-site sewage facility (OSSF) prior to installation. The Texas Administrative Code states in 30TAC§285.3(a) PERMIT REQUIRED. A person shall hold a permit and an approved plan to construct, alter, repair, extend, or operate an on-site sewage facility (OSSF) unless the OSSF meets one of the exceptions in subsection (f) of this section.

Classification: Moderate
- Self Report? NO For Informational Purposes Only

Citation: 5A THSC Chapter 341, SubChapter A 341.014(a)
5B THSC Chapter 366, SubChapter A 366.056

Description: Failure to use an approved method for wastewater/sewage treatment. The Texas Health and Safety Code states in THSC§366.056. APPROVAL OF ON-SITE SEWAGE DISPOSAL SYSTEM. (a) The commission or authorized agent may approve or disapprove the on-site sewage disposal system depending on the results of the inspections under Section 366.055.

Classification: Moderate
- Self Report? NO For Informational Purposes Only

Citation: 5A THSC Chapter 341, SubChapter A 341.011(5)
5A THSC Chapter 341, SubChapter A 341.014(a)

Description: Failure to prevent a nuisance condition at this establishment. The Texas Health and Safety Code states in THSC§341.011(5) NUISANCE. Each of the following is a public health nuisance: sewage, human excreta, wastewater, garbage, or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons.

* NOVs applicable for the Compliance History rating period 9/1/2015 to 8/31/2020

Appendix B

All Investigations Conducted During Component Period May 20, 2016 and May 20, 2021

- (1407532)

Item 1 May 22, 2017** For Informational Purposes Only
- (1403759)

Item 2 September 06, 2017** For Informational Purposes Only
- (1679233)

Item 3 November 09, 2020 For Informational Purposes Only
- (1698366)

Item 4 January 25, 2021 For Informational Purposes Only

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2015 and 08/31/2020.

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Compliance History Report

Compliance History Report for CN602992570, RN108926569, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator: CN602992570, Fischer, Christopher R. **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN108926569, WING DINGERS MINEOLA **Classification:** UNCLASSIFIED **Rating:** -----

Complexity Points: 0 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 700 NORTHWEST LOOP 564 IN MINEOLA, WOOD COUNTY, TEXAS

TCEQ Region: REGION 05 - TYLER

ID Number(s):
WATER QUALITY NON-PERMITTED ID NUMBER R05108926569 PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2500068

Compliance History Period: September 01, 2015 to August 31, 2020 **Rating Year:** 2020 **Rating Date:** 09/01/2020

Date Compliance History Report Prepared: May 20, 2021

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: May 20, 2016 to May 20, 2021

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

Name: Ronica Rodriguez **Phone:** (361) 825-3425

Site and Owner/Operator History:

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

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

- A. Final Orders, court judgments, and consent decrees:**
N/A
- B. Criminal convictions:**
N/A
- C. Chronic excessive emissions events:**
N/A
- D. The approval dates of investigations (CCEDS Inv. Track. No.):**
N/A
- 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.
N/A
- F. Environmental audits:**
N/A
- G. Type of environmental management systems (EMSs):**
N/A
- H. Voluntary on-site compliance assessment dates:**
N/A
- I. Participation in a voluntary pollution reduction program:**
N/A
- J. Early compliance:**
N/A
- Sites Outside of Texas:**
N/A

Component Appendices

Appendix A

All NOVs Issued During Component Period 5/20/2016 and 5/20/2021

- 1 Date: 04/12/2017 (1407532) Classification: Moderate
 Self Report? NO For Informational Purposes Only
 Citation: TWC Chapter 26 26.121
 Description: Failure to prevent unauthorized discharge of sewage. On December 16, 2015, evidence of sewage discharging and pooling was observed behind Wing Dingers in Mineola Texas. The Texas Water Code states in TWC§26.121(a)(1) UNAUTHORIZED DISCHARGES PROHIBITED. Except as authorized by the commission, no person may discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state.
 Classification: Moderate
- Self Report? NO For Informational Purposes Only
 Citation: 30 TAC Chapter 285, SubChapter A 285.3(a)
 5A THSC Chapter 341, SubChapter A 341.014(a)
 Description: Failure to obtain a permit for an on-site sewage facility (OSSF) prior to installation. The Texas Administrative Code states in 30TAC§285.3(a) PERMIT REQUIRED. A person shall hold a permit and an approved plan to construct, alter, repair, extend, or operate an on-site sewage facility (OSSF) unless the OSSF meets one of the exceptions in subsection (f) of this section.
 Classification: Moderate
- Self Report? NO For Informational Purposes Only
 Citation: 5A THSC Chapter 341, SubChapter A 341.014(a)
 5B THSC Chapter 366, SubChapter A 366.056
 Description: Failure to use an approved method for wastewater/sewage treatment. The Texas Health and Safety Code states in THSC§366.056. APPROVAL OF ON-SITE SEWAGE DISPOSAL SYSTEM. (a) The commission or authorized agent may approve or disapprove the on-site sewage disposal system depending on the results of the inspections under Section 366.055.
 Classification: Moderate
- Self Report? NO For Informational Purposes Only
 Citation: 5A THSC Chapter 341, SubChapter A 341.011(5)
 5A THSC Chapter 341, SubChapter A 341.014(a)
 Description: Failure to prevent a nuisance condition at this establishment. The Texas Health and Safety Code states in THSC§341.011(5) NUISANCE. Each of the following is a public health nuisance: sewage, human excreta, wastewater, garbage, or other organic wastes deposited, stored, discharged, or exposed in such a way as to be a potential instrument or medium in disease transmission to a person or between persons.

* NOVs applicable for the Compliance History rating period 9/1/2015 to 8/31/2020

Appendix B

All Investigations Conducted During Component Period May 20, 2016 and May 20, 2021

- Item 1 May 22, 2017** (1407532) For Informational Purposes Only
- Item 2 September 06, 2017** (1403759) For Informational Purposes Only
- Item 3 November 09, 2020 (1679233) For Informational Purposes Only
- Item 4 January 25, 2021 (1698366) For Informational Purposes Only

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2015 and 08/31/2020.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
WING DINGERS TEXAS LLC.
AND CHRISTOPHER R. FISCHER;
RN108926569**

**§
§
§
§
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§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2021-0200-PWS-E

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ, which requests appropriate relief, including the assessment of an administrative penalty and corrective action of the respondents. The respondents made the subject of this Order are Wing Dingers Texas LLC. and Christopher R. Fischer ("Respondents").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Respondents own and operate a public water system ("PWS") located at 700 Northwest Loop 564 in Mineola, Wood County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately four service connections, and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a PWS as defined in 30 TEX. ADMIN. CODE § 290.38(71).
2. Following an investigation conducted October 2 through October 19, 2020, an investigator determined that Respondents failed to submit plans and specifications to the Executive Director for review and approval prior to the construction of a new public water supply. Specifically, Respondents were operating a transient, noncommunity water system at a food service establishment without first obtaining approval of the system.
3. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Wing Dingers Texas LLC. and Christopher R. Fischer" (the "EDPRP") in the TCEQ Chief Clerk's office on October 21, 2022.
4. By letter dated October 21, 2022, sent to Respondents' last known addresses via certified mail, return receipts requested, postage prepaid, the Executive Director served Respondents with notice of the EDPRP. According to the return receipt "green cards," Respondents received notice of the EDPRP on October 24, 2022, as evidenced by the signatures on the cards and USPS.com "Track & Confirm" delivery confirmation records.
5. More than 20 days have elapsed since Respondents received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing.
6. On or about August 3, 2021, Christopher R. Fischer filed a petition for bankruptcy relief pursuant to Chapter 11 of the United States Code. On or about August 5, 2021, Wing Dingers Texas LLC. filed a petition for bankruptcy relief pursuant to Chapter 11 of the United States Code. Final Decrees in the Christopher R. Fischer and Wing Dingers Texas LLC. bankruptcy cases were issued on May 23, 2023.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are 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, Respondents failed to submit plans and specifications to the Executive Director for review and approval prior to the construction of a new public water supply, in violation of TEX. HEALTH & SAFETY CODE § 341.035(a) and 30 TEX. ADMIN. CODE 290.39(e)(1) and (h)(1).
3. As evidenced by Findings of Fact Nos. 3 and 4, the Executive Director timely served Respondents with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
4. As evidenced by Finding of Fact No. 5, Respondents failed to file a timely answer as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondents and assess the penalty recommended by the Executive Director.
5. As evidenced by Finding of Fact No. 6, Respondents filed petitions for bankruptcy relief pursuant to Chapter 11 of the United States Code and Final Decrees were issued in these cases. The automatic stay imposed by the Bankruptcy Code did not apply to the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power, by virtue of the exception set out at 11 United States Code § 362(b)(4). Accordingly, TCEQ (a governmental unit as defined under 11 United States Code § 101(27)) was expressly excepted from the automatic stay in pursuing enforcement of the State's environmental protection laws and in seeking to enter a monetary judgment for such violations prior to confirmation of both debtors' plans of reorganization. TCEQ recognizes that an injunction in the plans of reorganization in both cases prevent the collection of, and TCEQ will not seek to execute upon, any monetary judgment that may be obtained.
6. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049(a), the Commission has the authority to assess an administrative penalty against Respondents for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of two hundred fifty dollars (\$250.00) 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).
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondents are assessed an administrative penalty in the amount of two hundred fifty dollars (\$250.00) for violations of state statutes and rules of the TCEQ. The assessment of this penalty and Respondents' 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 which are not raised here.
2. All checks submitted to pay the penalty assessed by this Order may be made out to TCEQ and sent with the notation "Re: Wing Dingers Texas LLC. and Christopher R. Fischer; Docket No. 2021-0200-PWS-E" to:

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

3. Respondents shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Order, connect the food service establishment to an approved PWS, in accordance with 30 TEX. ADMIN. CODE § 290.39.
- b. Within 45 days after the effective date of this Order, submit written certification, in accordance with Ordering Provision No. 3.d., to demonstrate compliance with Ordering Provision No. 3.a.
- c. As an alternative to Ordering Provision Nos. 3.a. and 3.b.:
 - i. Within 180 days after the effective date of this Order, submit plans and specifications of the Facility for review and approval, in accordance with 30 TEX. ADMIN. CODE § 290.39. The plans and specifications shall be submitted to:

Plan Review Team
Water Supply Division, MC 159
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Respondents must respond completely and adequately, as determined by the TCEQ, to all requests concerning the plans and specifications within 15 days after the date of such requests, or by any other deadline specified in writing.

- ii. Within 195 days after the effective date of this Order, submit written certification, in accordance with Ordering Provision No. 3.d., to demonstrate compliance with Ordering Provision No. 3.c.i.
 - iii. Within 270 days after the effective date of this Order, obtain approval of the plans and specifications for the Facility, in accordance with 30 TEX. ADMIN. CODE § 290.39.
 - iv. Within 285 days after the effective date of this Order, submit written certification, in accordance with Ordering Provision No. 3.d., to demonstrate compliance with Ordering Provision No. 3.c.iii.
- d. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondents, 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 fine and imprisonment for knowing violations."

The written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and:

Water Section Manager
Tyler Regional Office
Texas Commission on Environmental Quality
2916 Teague Drive
Tyler, Texas 75701-3734

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are 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 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive 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 Enforcement Division at the address listed above.
7. 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 Respondents if the Executive Director determines that Respondents have not complied with one or more of the terms or conditions in this Order.
8. 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.
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. The Chief Clerk shall provide a copy of this fully executed Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



UNSWORN DECLARATION OF JESSE CLAYTON SMITH

“On behalf of the Executive Director of the Texas Commission on Environmental Quality, the ‘Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Wing Dingers Texas LLC. and Christopher R. Fischer’ (the ‘EDPRP’) was filed in the TCEQ Chief Clerk’s office on October 21, 2022.

The EDPRP was mailed to Respondents’ last known addresses on October 21, 2022, via certified mail, return receipts requested, postage prepaid. According to the return receipt ‘green cards’ and USPS.com ‘Track & Confirm’ delivery confirmation records, Respondents received notice of the EDPRP on October 24, 2022.

More than 20 days have elapsed since Respondents received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing.”

"My name is Jesse Clayton Smith, and I am an employee of the following governmental agency: Texas Commission on Environmental Quality. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct.”

Executed in Travis County,
State of Texas,
on the 21st day of June, 2023

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

Declarant