

Executive Summary – Enforcement Matter – Case No. 63689

Gaines County

RN102674793

Docket No. 2023-0299-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

Media:

PWS

Small Business:

No

Location(s) Where Violation(s) Occurred:

Gaines County Golf Course, 853 C North Highway 385, Seminole, Gaines 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: May 3, 2024

Comments Received: No

Penalty Information

Total Penalty Assessed: \$5,250

Amount Deferred for Naturally Occurring Inorganic Contaminants: \$5,250

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

Person/CN - Unclassified

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: February 13, 2023 through February 24, 2023

Date(s) of NOE(s): February 24, 2023

Executive Summary – Enforcement Matter – Case No. 63689
Gaines County
RN102674793
Docket No. 2023-0299-PWS-E

Violation Information

Failed to comply with the acute maximum contaminant level ("MCL") of 10 milligrams per liter for nitrate [30 TEX. ADMIN. CODE § 290.106(f)(2) and TEX. HEALTH & SAFETY CODE § 341.031(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Within 180 days, submit an acceptable written plan, including a proposed schedule and any applicable planning materials, to the Executive Director that provides for an alternate water source, treatment technology, or other means of completing the necessary corrective actions to achieve compliance within 1,095 days with the acute MCL for nitrate;
- b. Within 195 days, submit written certification to demonstrate compliance with a.;
- c. Within 365 days and on a semi-annual basis thereafter, submit progress reports. These reports shall include information regarding actions taken to provide water which meets the acute MCL for nitrate;
- d. Within 1,095 days, return to compliance with the acute MCL for nitrate based on a single sample concentration; and
- e. Within 1,110 days, submit written certification to demonstrate compliance with d.

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Miles Caston, Enforcement Division, Enforcement Team 4, MC 219, (512) 239-4593; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: The Honorable Cindy Therwhanger, Judge, Gaines County, P.O. Box 847, Seminole, Texas 79360

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	27-Feb-2023			
	PCW	28-Feb-2023	Screening	28-Feb-2023	EPA Due 30-Jun-2023

RESPONDENT/FACILITY INFORMATION

Respondent	Gaines County				
Reg. Ent. Ref. No.	RN102674793				
Facility/Site Region	7-Midland		Major/Minor Source	Minor	

CASE INFORMATION

Enf./Case ID No.	63689	No. of Violations	1
Docket No.	2023-0299-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Miles Caston
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,000
---	-------------------	---------

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0%	Adjustment	Subtotals 2, 3, & 7	\$250
---------------------------	-------------	------------	--------------------------------	-------

Notes	Enhancement for one NOV with the same/similar violations.			
--------------	---	--	--	--

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	\$14,276	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$40,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$5,250
-----------------------------	-----------------------	---------

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	\$5,250
-----------------------------	---------

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$5,250
-----------------------------------	-------------------------------	---------

DEFERRAL	100.0%	Reduction	Adjustment	-\$5,250
-----------------	---------------	-----------	------------	----------

Reduces the Final Assessed Penalty by the indicated percentage.

Notes

The Executive Director Recommends a conditional deferral for naturally occurring constituents.

PAYABLE PENALTY	\$0
------------------------	-----

Screening Date28-Feb-2023

RespondentGaines County

Case ID No.63689

Reg. Ent. Reference No.RN102674793

MediaPublic Water Supply

Enf. CoordinatorMiles Caston

Docket No.2023-0299-PWS-E

PCW

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

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>)	1	5%
	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)5%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3)0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7)0%

>> Compliance History Summary

Compliance History Notes	Enhancement for one NOV with the same/similar violations.
--------------------------	---

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)5%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%5%

Screening Date 28-Feb-2023		Docket No. 2023-0299-PWS-E		PCW	
Respondent Gaines County		<i>Policy Revision 5 (January 28, 2021)</i>			
Case ID No. 63689		<i>PCW Revision February 11, 2021</i>			
Reg. Ent. Reference No. RN102674793					
Media Public Water Supply					
Enf. Coordinator Miles Caston					
Violation Number		1			
Rule Cite(s)		30 Tex. Admin. Code § 290.106(f)(2) and Tex. Health & Safety Code § 341.031(a)			
Violation Description		Failed to comply with the acute maximum contaminant level ("MCL") of 10 milligrams per liter ("mg/L") for nitrate. Specifically, the single sample concentrations for nitrate were 11 mg/L for the third quarter of 2022 and 12 mg/L for the first quarter of 2023.			
		Base Penalty		\$5,000	
>> Environmental, Property and Human Health Matrix					
OR	Release		Harm		
		Major	Moderate	Minor	
	Actual	x			
	Potential				
		Percent		50.0%	
>> Programmatic Matrix					
		Falsification	Major	Moderate	Minor
		Percent		0.0%	
Matrix Notes		Exceeding the acute MCL for nitrate caused the persons served by the Facility to be exposed to pollutants which exceed levels protective of human health.			
		Adjustment		\$2,500	
				\$2,500	
Violation Events					
Number of Violation Events		2		180 Number of violation days	
		daily			
		weekly			
		monthly			
		quarterly	x		
		semiannual			
		annual			
		single event			
		Violation Base Penalty \$5,000			
		Two quarterly events are 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		\$5,000	
Economic Benefit (EB) for this violation					
Statutory Limit Test					
Estimated EB Amount		\$14,276		Violation Final Penalty Total \$5,250	
		This violation Final Assessed Penalty (adjusted for limits)		\$5,250	

Economic Benefit Worksheet

Respondent Gaines County
Case ID No. 63689
Reg. Ent. Reference No. RN102674793
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)	\$40,000	30-Sep-2022	4-Nov-2027	5.10	\$680	\$13,596	\$14,276
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 acute MCL for nitrate, calculated from the last day of the first monitoring period 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

\$40,000

TOTAL

\$14,276



Compliance History Report

Compliance History Report for CN600688253, RN102674793, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

Customer, Respondent, or Owner/Operator: CN600688253, Gaines County

Classification: UNCLASSIFIED

Rating: -----

Regulated Entity: RN102674793, GAINES COUNTY GOLF COURSE

Classification: NOT APPLICABLE

Rating: N/A

Complexity Points: N/A

Repeat Violator: N/A

CH Group: 14 - Other

Location: 853 C NORTH HIGHWAY 385 NEAR SEMINOLE, GAINES COUNTY, TEXAS

TCEQ Region: REGION 07 - MIDLAND

ID Number(s):

PUBLIC WATER SYSTEM/SUPPLY REGISTRATION
0830019

Compliance History Period: September 01, 2018 to August 31, 2023

Rating Year: 2023

Rating Date: 09/01/2023

Date Compliance History Report Prepared: January 25, 2024

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: January 25, 2019 to January 25, 2024

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

Name: Miles Caston

Phone: (512) 239-4593

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:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1	February 25, 2022	(1795110)
Item 2	September 29, 2023	(1925422)

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:	02/08/2023	(1879872)	
	Self Report?	NO		Classification: Moderate
	Citation:	30 TAC Chapter 290, SubChapter F 290.106(f)(2)		
	Description:	NO3 AMCL 1Q2023 - This system exceeded the MCL of 10 mg/L for nitrate (as nitrogen) with a sample result of 12 mg/L collected on 01/11/2023. ETT Point Value = 10		

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
GAINES COUNTY
RN102674793

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

AGREED ORDER DOCKET NO. 2023-0299-PWS-E

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Gaines County (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this Order to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Order are binding upon the Respondent.

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

I. FINDINGS OF FACT

1. The Respondent owns and operates a public water supply located at 853 C North Highway 385 near Seminole, Gaines County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 2 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(73).
2. During a record review for the Facility conducted on February 13, 2023 through February 24, 2023, an investigator documented that the single sample concentrations for nitrate were 11 milligrams per liter ("mg/L") for the third quarter of 2022 and 12 mg/L for the first quarter of 2023.

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 acute maximum contaminant level ("MCL") of 10 mg/L for nitrate, in violation of 30 TEX. ADMIN. CODE § 290.106(f)(2) and TEX. HEALTH & SAFETY CODE § 341.031(a).
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 \$5,250 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The amount of \$5,250 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order and shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any requirement contained in this Order, the Executive Director may demand payment of all or part of the conditionally deferred penalty.

III. ORDERING PROVISIONS

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

1. The Respondent is assessed a penalty as set forth in Conclusion of Law No. 4 for violations of state statutes and rules of the TCEQ. The payment of this penalty and the Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations that are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Gaines County, Docket No. 2023-0299-PWS-E" to:

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

2. The Respondent shall undertake the following technical requirements:
 - a. Within 180 days after the effective date of this Order, submit an acceptable written plan, including a proposed schedule and any applicable planning materials, to the Executive Director that provides for an alternate water source, treatment technology, or other means of completing the necessary corrective actions to achieve compliance within 1,095 days after the effective date of this

Order with the acute MCL for nitrate to the addresses listed in Ordering Provision No. 2.e below.

- b. Within 195 days after the effective date of this Order, submit written certification as described in Ordering Provision No. 2.e below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.
- c. Within 365 days after the effective date of this Order and on a semi-annual basis thereafter, submit progress reports to the addresses listed in Ordering Provision No. 2.e below. These reports shall include information regarding actions taken to provide water which meets the acute MCL for nitrate.
- d. Within 1,095 days after the effective date of this Order, return to compliance with the acute MCL for nitrate based on a single sample concentration, in accordance with 30 TEX. ADMIN. CODE § 290.106.
- e. Within 1,110 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 2.d. 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:

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

- 3. All relief not expressly granted in this Order is denied.

4. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Enforcement Division at the address listed above.
6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms in this Order.
7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
9. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
10. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director

5/3/2024

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 OAG 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 OAG of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

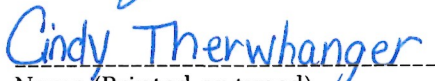
In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

3/27/2024

Date



Name (Printed or typed)
Authorized Representative of
Gaines County



Title

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

Instructions: Send the original, signed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Ordering Provision 1 of this Order.