

TCEQ Interoffice Memorandum

To: Mary Smith, General Counsel

Thru: *MBC* Melissa Cordell, Assistant Deputy Director
Enforcement Division

From: *MP* Michael Parrish, Team Leader
Special Functions Team

Date: August 6, 2024

Subject: Backup Revision
August 14, 2024 Commission Agenda
Item No. 50 – MIDWAY WATER UTILITIES, INC.
Docket No. 2023-1546-PWS-E

Enclosed please find the following:

Executive Summary:

- Page 1, Past-Due Penalties: Remove reference to a past-due penalty

Please do not hesitate to call Michael Parrish at (512) 239-2548 if you have any questions regarding this matter.

cc: Garrett Arthur, Public Interest Counsel
Melissa Schmidt, Public Interest Counsel
Gill Valls, Office of General Counsel
Katherine McKenzie, Agenda Coordinator, Litigation Division
Amy Settemeyer, Deputy Director, Enforcement Division
Melissa Cordell, Assistant Deputy Director, Enforcement Division
Rebecca Margain-Nunez, Executive Assistant, Enforcement Division
Brett Lanham, Manager, Special Functions and Compliance Monitoring,
Enforcement Division
Megan Hamilton, Manager, Drinking Water, Enforcement Division
Taner Hengst, Enforcement Coordinator, Drinking Water, Enforcement Division

Executive Summary – Enforcement Matter – Case No. 64993
MIDWAY WATER UTILITIES, INC.
RN101265213
Docket No. 2023-1546-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:

The Cliffs, located off of Highway 16, approximately 0.5 mile southwest of the Brazos River Bridge, Graford, Palo Pinto County

Type of Operation:

Public water supply

Other Significant Matters:

Additional Pending Enforcement Actions: Yes, Docket Nos. 2023-1419-PWS-E and 2024-0215-PWS-E

Past-Due Penalties: **No**

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: July 5, 2024

Comments Received: No

Penalty Information

Total Penalty Assessed: \$20,200

Total Paid to General Revenue: \$20,200

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - High

Major Source: Yes

Statutory Limit Adjustment: \$4,500

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: September 4, 2023 through October 20, 2023

Date(s) of NOE(s): October 20, 2023

Executive Summary – Enforcement Matter – Case No. 64993
MIDWAY WATER UTILITIES, INC.
RN101265213
Docket No. 2023-1546-PWS-E

Order Type:

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Media:

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Location(s) Where Violation(s) Occurred:

The Cliffs, located off of Highway 16, approximately 0.5 mile southwest of the Brazos River Bridge, Graford, Palo Pinto County

Type of Operation:

Public water supply

Other Significant Matters:

Additional Pending Enforcement Actions: Yes, Docket Nos. 2023-1419-PWS-E and 2024-0215-PWS-E

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: July 5, 2024

Comments Received: No

Penalty Information

Total Penalty Assessed: \$20,200

Total Paid to General Revenue: \$20,200

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

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Major Source: Yes

Statutory Limit Adjustment: \$4,500

Applicable Penalty Policy: January 2021

Investigation Information

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Date(s) of Investigation: September 4, 2023 through October 20, 2023

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Executive Summary – Enforcement Matter – Case No. 64993
MIDWAY WATER UTILITIES, INC.
RN101265213
Docket No. 2023-1546-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:

The Cliffs, located off of Highway 16, approximately 0.5 mile southwest of the Brazos River Bridge, Graford, Palo Pinto County

Type of Operation:

Public water supply

Other Significant Matters:

Additional Pending Enforcement Actions: Yes, Docket Nos. 2023-1419-PWS-E and 2024-0215-PWS-E

Past-Due Penalties: Yes, Account #23616838 for Case No. 64896

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: July 5, 2024

Comments Received: No

Penalty Information

Total Penalty Assessed: \$20,200

Total Paid to General Revenue: \$20,200

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - High

Major Source: Yes

Statutory Limit Adjustment: \$4,500

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: September 4, 2023 through October 20, 2023

Date(s) of NOE(s): October 20, 2023

Executive Summary – Enforcement Matter – Case No. 64993
MIDWAY WATER UTILITIES, INC.
RN101265213
Docket No. 2023-1546-PWS-E

Violation Information

1. Failed to meet minimum treatment technique requirements for a system that treats surface water before the water reaches the entry point to the distribution system [30 TEX. ADMIN. CODE § 290.111(c)(3)(B)].
2. Failed to achieve combined filter effluent ("CFE") turbidity levels that are less than 1.0 nephelometric turbidity unit ("NTU") during a period when individual filter effluent ("IFE") turbidity levels were above 2.0 NTU at one or more filters [30 TEX. ADMIN. CODE § 290.111(i)(4)(B) and TEX. HEALTH & SAFETY CODE § 341.031(a)].
3. Failed to achieve a turbidity level of CFE that is less than 0.3 NTU in at least 95% of the samples tested [30 TEX. ADMIN. CODE § 290.111(e)(1)(B) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Respondent implemented the following corrective measures:

- a. By December 1, 2023, met the minimum treatment technique requirements of cryptosporidium removal;
- b. By December 1, 2023, achieved CFE turbidity levels that are less than 1.0 NTU during a period when IFE turbidity levels were above 2.0 NTU at one or more filters; and
- c. By December 1, 2023, achieved a CFE that is 0.3 NTU or less in at least 95% of samples.

Technical Requirements:

N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Taner Hengst, Enforcement Division, Enforcement Team 5, MC 219, (512) 239-1143; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: Jeffrey McIntyre, President, MIDWAY WATER UTILITIES, INC., 2150 Town Square Place, Suite 400, Sugar Land, Texas 77479

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	30-Oct-2023	Screening	2-Nov-2023	EPA Due	31-Dec-2023
	PCW	3-Nov-2023				

RESPONDENT/FACILITY INFORMATION

Respondent	MIDWAY WATER UTILITIES, INC.
Reg. Ent. Ref. No.	RN101265213
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	64993	No. of Violations	3
Docket No.	2023-1546-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Taner Hengst
		EC's Team	Enforcement Team 5
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$19,000
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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	40.0%	Adjustment	Subtotals 2, 3, & 7	\$7,600
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Notes: Enhancement for two NOV's with the same/similar violations, five NOV's with dissimilar violations, and one agreed order containing a denial of liability.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	-\$1,900
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Economic Benefit	0.0%	Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$36
Estimated Cost of Compliance	\$2,100

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$24,700
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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	\$24,700
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$20,200
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$20,200
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Screening Date	2-Nov-2023	Docket No.	2023-1546-PWS-E	PCW
Respondent	MIDWAY WATER UTILITIES, INC.			<i>Policy Revision 5 (January 28, 2021)</i>
Case ID No.	64993			<i>PCW Revision February 11, 2021</i>
Reg. Ent. Reference No.	RN101265213			
Media	Public Water Supply			
Enf. Coordinator	Taner Hengst			

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>)	2	10%
	Other written NOVs	5	10%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	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) 40%

>> 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 two NOVs with the same/similar violations, five NOVs with dissimilar violations, and one agreed order containing a denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 40%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 40%

Screening Date 2-Nov-2023 Respondent MIDWAY WATER UTILITIES, INC. Case ID No. 64993 Reg. Ent. Reference No. RN101265213 Media Public Water Supply Enf. Coordinator Taner Hengst	Docket No. 2023-1546-PWS-E	PCW <i>Policy Revision 5 (January 28, 2021)</i> <i>PCW Revision February 11, 2021</i>
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Violation Number	1		
Rule Cite(s)	30 Tex. Admin. Code § 290.111(c)(3)(B)		
Violation Description	Failed to meet minimum treatment technique requirements for a system that treats surface water before the water reaches the entry point to the distribution system. Specifically, the Respondent did not meet the minimum requirements for cryptosporidium removal for the month of July 2023.		
Base Penalty			\$5,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0.0%
Matrix Notes	Failure to meet minimum treatment requirements could result in persons served by the Facility being exposed to contaminants which would exceed levels protective of human health.				
Adjustment					\$3,500

Adjustment		\$1,500
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Violation Events

Number of Violation Events	1	31	Number of violation days
	daily		
	weekly		
	monthly		
	quarterly		
	semiannual		
	annual		
	single event	x	
Violation Base Penalty			
\$1,500			
One single event is recommended.			

Good Faith Efforts to Comply

	10.0%		
	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer	
Extraordinary			
Ordinary		x	
N/A			
Notes	The Respondent achieved compliance on December 1, 2023.		
Violation Subtotal			\$1,350

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount	Violation Final Penalty Total
\$17	\$1,950
This violation Final Assessed Penalty (adjusted for limits)	
\$1,950	

Economic Benefit Worksheet

Respondent MIDWAY WATER UTILITIES, INC.
Case ID No. 64993
Reg. Ent. Reference No. RN101265213
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)	\$1,000	31-Jul-2023	1-Dec-2023	0.34	\$17	n/a	\$17
Notes for DELAYED costs The delayed cost includes the estimated amount for additional maintenance and oversight to ensure minimum treatment technique requirements are met throughout the distribution system, calculated from the last date of the month of noncompliance to the 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 \$1,000

TOTAL \$17

Screening Date 2-Nov-2023 Respondent MIDWAY WATER UTILITIES, INC. Case ID No. 64993 Reg. Ent. Reference No. RN101265213 Media Public Water Supply Enf. Coordinator Taner Hengst	Docket No. 2023-1546-PWS-E	PCW <i>Policy Revision 5 (January 28, 2021)</i> <i>PCW Revision February 11, 2021</i>
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Violation Number	2	Rule Cite(s)	
		30 Tex. Admin. Code § 290.111(i)(4)(B) and Tex. Health & Safety Code § 341.031(a)	
Violation Description	Failed to achieve combined filter effluent ("CFE") turbidity levels that are less than 1.0 nephelometric turbidity unit ("NTU") during a period when individual filter effluent ("IFE") turbidity levels were above 2.0 NTU at one or more filters. Specifically, the CFE exceeded 1.0 NTU for three days in July 2023.		

Base Penalty	\$5,000
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>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual	x			Percent 100.0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0.0%

Matrix Notes	Failure to maintain required turbidity levels exposed persons served by the Facility to contaminants which exceed levels that are protective of human health.
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Adjustment	\$0
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	\$5,000
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Violation Events

Number of Violation Events	3	3	Number of violation days
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	daily						
	weekly						
	monthly						
	quarterly						
	semiannual						
	annual						
	single event	x					

Violation Base Penalty	\$15,000
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Three single events are recommended (one event per day).	
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Good Faith Efforts to Comply

	10.0%	
	Before NOE/NOV	NOE/NOV to EDP RP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		
Notes	The Respondent achieved compliance on December 1, 2023.	

Violation Subtotal	\$13,500
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Economic Benefit (EB) for this violation

Estimated EB Amount	\$17	Statutory Limit Test
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Violation Final Penalty Total	\$19,500
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This violation Final Assessed Penalty (adjusted for limits)	\$15,000
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Economic Benefit Worksheet

Respondent MIDWAY WATER UTILITIES, INC.
Case ID No. 64993
Reg. Ent. Reference No. RN101265213
Media Public Water Supply
Violation No. 2

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)	\$1,000	31-Jul-2023	1-Dec-2023	0.34	\$17	n/a	\$17

Notes for DELAYED costs

The delayed cost includes the estimated amount for additional oversight that could have prevented the exceedances, calculated from the last date of the month of noncompliance to the 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

\$1,000

TOTAL

\$17

Screening Date 2-Nov-2023 Respondent MIDWAY WATER UTILITIES, INC. Case ID No. 64993 Reg. Ent. Reference No. RN101265213 Media Public Water Supply Enf. Coordinator Taner Hengst	Docket No. 2023-1546-PWS-E	PCW <i>Policy Revision 5 (January 28, 2021)</i> <i>PCW Revision February 11, 2021</i>
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Violation Number	3		Rule Cite(s)	
			30 Tex. Admin. Code § 290.111(e)(1)(B) and Tex. Health & Safety Code § 341.0315(c)	
Violation Description	Failed to achieve a turbidity level of CFE that is less than 0.3 NTU in at least 95% of the samples tested during the month of July 2023.			

Base Penalty	\$5,000
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>> Environmental, Property and Human Health Matrix

OR		Harm			
	Release	Major	Moderate	Minor	
	Actual		x		
	Potential				
					Percent 50.0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0.0%

Matrix Notes	Failure to maintain required turbidity levels in at least 95% of samples tested each month caused persons served by the Facility to be exposed to a significant amount of contaminants which did not exceed levels protective of human health.
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Adjustment	\$2,500
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	\$2,500
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Violation Events

Number of Violation Events	1	31	Number of violation days
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	daily			Violation Base Penalty \$2,500
	weekly			
	monthly			
	quarterly			
	semiannual			
	annual			
	single event	x		

One single event is recommended.

Good Faith Efforts to Comply

	10.0%	
	Before NOE/NOV	NOE/NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		
Notes	The Respondent achieved compliance on December 1, 2023.	

Violation Subtotal	\$2,250
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Economic Benefit (EB) for this violation

Estimated EB Amount	\$2
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Statutory Limit Test

Violation Final Penalty Total	\$3,250
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This violation Final Assessed Penalty (adjusted for limits)	\$3,250
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Economic Benefit Worksheet

Respondent MIDWAY WATER UTILITIES, INC.
Case ID No. 64993
Reg. Ent. Reference No. RN101265213
Media Public Water Supply
Violation No. 3

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)	\$100	31-Jul-2023	1-Dec-2023	0.34	\$2	n/a	\$2
Notes for DELAYED costs	The Other (as needed) delayed cost includes the estimated amount to determine the cause of noncompliance, make any necessary repairs or adjustments to the Facility, and maintain a CFE that is 0.3 NTU or less in at least 95% of the samples tested each month, calculated from the last date of the month of noncompliance to the 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 \$100

TOTAL \$2

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

Compliance History Report for CN600663579, RN101265213, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

Customer, Respondent, or Owner/Operator: CN600663579, MIDWAY WATER UTILITIES, INC. **Classification:** SATISFACTORY **Rating:** 2.62

Regulated Entity: RN101265213, CLIFFS THE **Classification:** HIGH **Rating:** 0.00

Complexity Points: 3 **Repeat Violator:** NO

CH Group: 14 - Other

Location: OFF HIGHWAY 16, APPROXIMATELY 0.5 MILES SOUTHWEST OF THE BRAZOS RIVER BRIDGE NEAR GRAFORD, PALO PINTO COUNTY, TEXAS

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s):

AIR QUALITY NON PERMITTED ID NUMBER
R04101265213

PETROLEUM STORAGE TANK REGISTRATION
REGISTRATION 67095

CLEAN WATER CERTIFICATION PROGRAM ID NUMBER
POS550

CLEAN WATER CERTIFICATION PROGRAM ID NUMBER
POS562

PUBLIC WATER SYSTEM/SUPPLY REGISTRATION
1820061

CLEAN WATER CERTIFICATION PROGRAM ID NUMBER
POS564

CLEAN WATER CERTIFICATION PROGRAM ID NUMBER
POS563

Compliance History Period: September 01, 2018 to August 31, 2023 **Rating Year:** 2023 **Rating Date:** 09/01/2023

Date Compliance History Report Prepared: April 23, 2024

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: April 23, 2019 to April 23, 2024

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

Name: Taner Hengst

Phone: (512) 239-1143

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? YES
- 3) Who is the current owner/operator?
The Cliffs Resort, Inc. OWNER OPERATOR since 1/11/2007
Young County Butane, Inc. OWNER since 1/23/1997
Midway Water Utilities, Inc. OWNER since 11/16/2020
AC BLUFF CREEK MARINA, LLC OWNER since 12/9/2021
- 4) Who was/were the prior owner(s)/operator(s)?
AC Cliffs Marina, LLC, OWNER, 1/3/2020 to 12/8/2021
Double Diamond Utilities Co., OWNER, 10/19/2006 to 11/15/2020
Double Diamond, Inc., OWNER, 4/6/2018 to 1/3/2020

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

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

- 1 Effective Date: 05/19/2020 ADMINORDER 2019-1518-PWS-E (1660 Order-Agreed Order With Denial)
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(q)(2)
Description: Failed to institute special precautions as described in the flowchart found in 30 TEX. ADMIN. CODE § 290.47(e) in the event of low distribution pressures and water outages, in violation of 30 TEX. ADMIN. CODE § 290.46(q)(2). Specifically, on August 10, 2019, a valve closure at Spyglass Drive and Heritage Drive caused water outages, and the water system did not immediately collect the required bacteriological samples after flushing the distribution system.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 2 February 02, 2021 (1700869)

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: 05/19/2023 (1930808)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.115(f)(1)
Description: TTHM LRAA MCL 1Q2023 – During the 1st quarter of 2023 the system violated the maximum contaminant level for trihalomethanes with a LRAA of 0.082 mg/L at 160 Cliff DR, Graford (DBP2-01). ETT Point Value = 5
- 2 Date: 07/14/2023 (1930808)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.115(f)(1)
Description: TTHM LRAA MCL 2Q2023 – During the 2nd quarter of 2023 the system violated the maximum contaminant level for trihalomethanes with a LRAA of 0.108 mg/L at 160 Cliff DR, Graford (DBP2-01). ETT Point Value = 5
- 3 Date: 09/07/2023 (1936854)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.111(i)(4)
Description: SWTR Acute TT Violation 07/2023 – 3 day(s) with combined filter effluent turbidity readings above 1.0 NTU at SH 16 1 MI SW OF BRAZOS RIVER BRIDGE (TP18486). ETT Point Value = 10; Violation Determination Date = 07/31/2023

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.111(e)(1)(B)
Description: SWTR Non-acute TT Violation 07/2023 – 55.9 % of combined filter effluent turbidity readings for the month were above 0.3 NTU at SH 16 1 MI SW OF BRAZOS RIVER BRIDGE (TP18486). ETT Point Value = 5; Violation Determination Date = 07/31/2023
- 4 Date: 09/13/2023 (1930808)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.115(f)(1)
Description: TTHM LRAA MCL 3Q2023 – During the 3rd quarter of 2023 the system violated the maximum contaminant level for trihalomethanes with a LRAA of 0.104 mg/L at 160 Cliff DR, Graford (DBP2-01). ETT Point Value = 5
- 5 Date: 09/28/2023 (1936854)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.111(c)(3)(B)
 30 TAC Chapter 290, SubChapter F 290.111(f)(1)
 30 TAC Chapter 290, SubChapter F 290.111(i)(5)
Description: SWTR Non-acute TT Violation 07/2023 – Failure to meet the minimum requirements of cryptosporidium removal in the month of 07/2023 at SH 16 1 MI SW OF BRAZOS RIVER BRIDGE (TP18486). ETT Point Value = 5; Violation Determination Date = 07/13/2023
- 6 Date: 12/08/2023 (1929719)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(r)
Description: Failure to maintain a minimum pressure of 35 psi throughout the distribution system under normal operating conditions.
 EIC C4 MOD(2)(G)
Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.44(c)
Description: Failure to provide the minimum required line size for the water main serving the employee housing area.
EIC C4 MOD(2)(G)

7 Date: 12/11/2023 (1944766)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(2)
30 TAC Chapter 290, SubChapter D 290.45(b)(2)(F)
Description: Failure to provide a minimum service pump capacity of 2.0 gpm per connection.
EIC B18(c)(10) MOD(2)(G)

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
MIDWAY WATER UTILITIES, INC.
RN101265213

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

AGREED ORDER DOCKET NO. 2023-1546-PWS-E

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding MIDWAY WATER UTILITIES, INC. (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 off Highway 16, approximately 0.5 miles Southwest of the Brazos River Bridge near Graford, Palo Pinto County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 311 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 September 4, 2023 through October 20, 2023, an investigator documented that:
 - a. The Respondent did not meet the minimum requirements of cryptosporidium removal for the month of July 2023.
 - b. The combined filter effluent ("CFE") exceeded 1.0 nephelometric turbidity unit ("NTU") for three days in July 2023.
 - c. The Respondent did not achieve a turbidity level of CFE that is less than 0.3 NTU in at least 95% of the samples tested during the month of July 2023.

3. The Executive Director recognizes that the Respondent implemented the following corrective measures at the Facility:
 - a. By December 1, 2023, met the minimum treatment technique requirements of cryptosporidium removal;
 - b. By December 1, 2023, achieved CFE turbidity levels that are less than 1.0 NTU during a period when individual filter effluent ("IFE") turbidity levels were above 2.0 NTU at one or more filters; and
 - c. By December 1, 2023, achieved a CFE that is 0.3 NTU or less in at least 95% of samples.

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.a, the Respondent failed to meet minimum treatment technique requirements for a system that treats surface water before the water reaches the entry point to the distribution system, in violation of 30 TEX. ADMIN. CODE § 290.111(c)(3)(B).
3. As evidenced by Finding of Fact No. 2.b, the Respondent failed to achieve CFE turbidity levels that are less than 1.0 NTU during a period when IFE turbidity levels were above 2.0 NTU at one or more filters, in violation of 30 TEX. ADMIN. CODE § 290.111(i)(4)(B) and TEX. HEALTH & SAFETY CODE § 341.031(a).
4. As evidenced by Finding of Fact No. 2.c, the Respondent failed to achieve a turbidity level of CFE that is less than 0.3 NTU in at least 95% of the samples tested, in violation of 30 TEX. ADMIN. CODE § 290.111(e)(1)(B) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
5. 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.
6. An administrative penalty in the amount of \$20,200 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 Respondent paid the \$20,200 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. 6 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: MIDWAY WATER UTILITIES, INC., Docket No. 2023-1546-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. All relief not expressly granted in this Order is denied.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.

9. 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

7/1/2024

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

Date

Name (Printed or typed)

Title

Authorized Representative of
MIDWAY WATER UTILITIES, INC.

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

12535 Reed Rd location has changed to:
2150 Town Square Place
Suite 900
Sugar Land, TX 77479

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.