

**Executive Summary – Enforcement Matter – Case No. 65325**

**Borden County**

**RN101200731**

**Docket No. 2024-0163-PWS-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Three repeated enforcement actions (or two orders with nuisance violations) over the prior five year period for the same violation(s).

**Media:**

PWS

**Small Business:**

No

**Location(s) Where Violation(s) Occurred:**

Borden County Water System, located at the intersection of State Highway 180 and Farm-to-Market Road 669, Gail, Borden 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:** September 20, 2024

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$1,787

**Amount Deferred for Naturally Occurring Inorganic Contaminants:** \$1,312

**Total Paid to General Revenue:** \$475

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**Compliance History Classifications:**

Person/CN - High

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:** December 18, 2023 through January 12, 2024

**Date(s) of NOE(s):** January 12, 2024

**Executive Summary – Enforcement Matter – Case No. 65325**  
**Borden County**  
**RN101200731**  
**Docket No. 2024-0163-PWS-E**

***Violation Information***

1. Failed to comply with the maximum contaminant level ("MCL") of 0.010 milligrams per liter for arsenic based on a running annual average [30 TEX. ADMIN. CODE § 290.106(f)(3)(C) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].
2. Failed to submit a Disinfection Level Quarterly Operating Report ("DLQOR") to the Executive Director ("ED") by the tenth day of the month following the end of each quarter [30 TEX. ADMIN. CODE § 290.110(e)(4)(A) and (f)(3)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

On June 11, 2024, the Respondent submitted a DLQOR to the ED.

**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 ED 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 MCL for arsenic;
- 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 MCL for arsenic;
- d. Within 1,095 days, return to compliance with the MCL for arsenic based on a running annual average; and
- e. Within 1,110 days, submit written certification to demonstrate compliance with d.

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Kaisie Hubschmitt, Enforcement Division, Enforcement Team 5, MC 219, (512) 239-1482; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

**Respondent:** The Honorable Shane Walker, County Judge, Borden County, P.O. Box 156, 79738

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

<b>DATES</b>	<b>Assigned</b>	16-Jan-2024	<b>Screening</b>	25-Jan-2024	<b>EPA Due</b>	31-Dec-2023
	<b>PCW</b>	8-Feb-2024				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Borden County (PCW No. 1 of 2)
<b>Reg. Ent. Ref. No.</b>	RN101200731
<b>Facility/Site Region</b>	7-Midland
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	65325	<b>No. of Violations</b>	1
<b>Docket No.</b>	2024-0163-PWS-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Kaisie Hubschmitt
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$5,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$1,250</b>
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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.

<b>Compliance History</b>	<b>5.0%</b> Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$62</b>
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Notes: Enhancement for three NOV's with same/similar violations. Reduction for High Performer compliance history person classification.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
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<b>Economic Benefit</b>	<b>0.0%</b> Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$13,071
Estimated Cost of Compliance	\$40,000

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$1,312</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>0.0%</b> Adjustment	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	<b>\$1,312</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$1,312</b>
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<b>DEFERRAL</b>	<b>100.0%</b> Reduction	<b>Adjustment</b>	<b>-\$1,312</b>
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes:

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

<b>PAYABLE PENALTY</b>	<b>\$0</b>
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Screening Date 25-Jan-2024

Docket No. 2024-0163-PWS-E

PCW

Respondent Borden County (PCW No. 1 of 2)

Policy Revision 5 (January 28, 2021)

Case ID No. 65325

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN101200731

Media Public Water Supply

Enf. Coordinator Kaisie Hubschmitt

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	3	15%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	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)** 15%

#### >> Repeat Violator (Subtotal 3)

N/A

**Adjustment Percentage (Subtotal 3)** 0%

#### >> Compliance History Person Classification (Subtotal 7)

High Performer

**Adjustment Percentage (Subtotal 7)** -10%

#### >> Compliance History Summary

Compliance History Notes

Enhancement for three NOVs with same/similar violations. Reduction for High Performer compliance history person classification.

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

#### >> Final Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** 5%

**Screening Date** 25-Jan-2024 **Docket No.** 2024-0163-PWS-E **PCW**  
**Respondent** Borden County (PCW No. 1 of 2) *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 65325 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN101200731  
**Media** Public Water Supply  
**Enf. Coordinator** Kaisie Hubschmitt

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 290.106(f)(3)(C) and Tex. Health & Safety Code § 341.0315(c)

**Violation Description** Failed to comply with the maximum contaminant level ("MCL") of 0.010 milligrams per liter ("mg/L") for arsenic based on a running annual average. Specifically, the running annual average concentrations of arsenic were 0.012 mg/L for the first quarter of 2023, 0.015 mg/L for the second quarter of 2023, 0.017 mg/L for the third quarter of 2023, and 0.019 mg/L for the fourth quarter of 2023.

**Base Penalty** \$5,000

>> **Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual		x		25.0%
	Potential				

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0.0%

**Matrix Notes** Exceeding the MCL for arsenic caused the persons served by the Facility to be exposed to a significant amount of pollutants which do not exceed levels protective of human health.

**Adjustment** \$3,750

\$1,250

**Violation Events**

Number of Violation Events 1 364 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	x
single event	

**Violation Base Penalty** \$1,250

One annual event is recommended.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

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

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

**Violation Subtotal** \$1,250

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$13,071 **Violation Final Penalty Total** \$1,313

**This violation Final Assessed Penalty (adjusted for limits)** \$1,313

# Economic Benefit Worksheet

**Respondent** Borden County (PCW No. 1 of 2)  
**Case ID No.** 65325  
**Reg. Ent. Reference No.** RN101200731  
**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)	\$40,000	31-Mar-2023	29-Nov-2027	4.67	\$622	\$12,449	\$13,071
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 corrective actions to return to compliance with the MCL for arsenic, calculated from the last day of the first quarter of noncompliance to the estimated date of compliance.

### Avoided Costs

**ANNUALIZE avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance

\$40,000

**TOTAL**

\$13,071



# Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

<b>DATES</b>	<b>Assigned</b>	16-Jan-2024	<b>Screening</b>	25-Jan-2024	<b>EPA Due</b>	31-Dec-2023
	<b>PCW</b>	8-Feb-2024				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Borden County (PCW No. 2 of 2)
<b>Reg. Ent. Ref. No.</b>	RN101200731
<b>Facility/Site Region</b>	7-Midland
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	65325	<b>No. of Violations</b>	1
<b>Docket No.</b>	2024-0163-PWS-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Kaisie Hubschmitt
		<b>EC's Team</b>	Enforcement Team 5
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$5,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$500</b>
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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.

<b>Compliance History</b>	<b>5.0%</b> Adjustment	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$25</b>
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Notes: Enhancement for three NOV's with same/similar violations. Reduction for High Performer compliance history person classification.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>-\$50</b>
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<b>Economic Benefit</b>	<b>0.0%</b> Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$22
Estimated Cost of Compliance	\$22

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$475</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	<b>0.0%</b> Adjustment	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	<b>\$475</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$475</b>
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<b>DEFERRAL</b>	<b>0.0%</b> Reduction Adjustment	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes:

No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	<b>\$475</b>
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Screening Date 25-Jan-2024

Docket No. 2024-0163-PWS-E

PCW

Respondent Borden County (PCW No. 2 of 2)

Policy Revision 5 (January 28, 2021)

Case ID No. 65325

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN101200731

Media Public Water Supply

Enf. Coordinator Kaisie Hubschmitt

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	3	15%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	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)** 15%

#### >> Repeat Violator (Subtotal 3)

N/A

**Adjustment Percentage (Subtotal 3)** 0%

#### >> Compliance History Person Classification (Subtotal 7)

High Performer

**Adjustment Percentage (Subtotal 7)** -10%

#### >> Compliance History Summary

Compliance History Notes

Enhancement for three NOVs with same/similar violations. Reduction for High Performer compliance history person classification.

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

#### >> Final Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** 5%



**Screening Date** 25-Jan-2024 **Docket No.** 2024-0163-PWS-E **PCW**  
**Respondent** Borden County (PCW No. 2 of 2) *Policy Revision 5 (January 28, 2021)*  
**Case ID No.** 65325 *PCW Revision February 11, 2021*  
**Reg. Ent. Reference No.** RN101200731  
**Media** Public Water Supply  
**Enf. Coordinator** Kaisie Hubschmitt

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 290.110(e)(4)(A) and (f)(3)

**Violation Description** Failed to submit a Disinfection Level Quarterly Operating Report ("DLQOR") to the Executive Director by the tenth day of the month following the end of each quarter for the third quarter of 2023.

**Base Penalty** \$5,000

>> **Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

>> **Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		

100% of the rule requirements were not met.

**Adjustment** \$4,500

\$500

**Violation Events**

Number of Violation Events 1 38 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$500

One single event is recommended.

**Good Faith Efforts to Comply** 10.0% Reduction \$50

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

**Notes** The Respondent achieved compliance on June 11, 2024.

**Violation Subtotal** \$450

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$22 **Violation Final Penalty Total** \$475

**This violation Final Assessed Penalty (adjusted for limits)** \$475

# Economic Benefit Worksheet

**Respondent** Borden County (PCW No. 2 of 2)  
**Case ID No.** 65325  
**Reg. Ent. Reference No.** RN101200731  
**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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

### 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	\$22	10-Oct-2023	25-Jan-2024	0.29	\$0	\$22	\$22
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount to prepare and submit a DLQOR (\$22 per DLQOR x one report), calculated from the date the report was due for the third quarter of 2023 to the date of screening.

Approx. Cost of Compliance \$22

**TOTAL** \$22



# Compliance History Report

Compliance History Report for CN600915839, RN101200731, Rating Year 2023 which includes Compliance History (CH) components from September 1, 2018, through August 31, 2023.

**Customer, Respondent, or Owner/Operator:** CN600915839, Borden County      **Classification:** HIGH      **Rating:** 0.00  
**Regulated Entity:** RN101200731, BORDEN COUNTY WATER SYSTEM      **Classification:** NOT APPLICABLE      **Rating:** N/A  
**Complexity Points:** N/A      **Repeat Violator:** N/A  
**CH Group:** 14 - Other  
**Location:** INTERSECTION OF STATE HIGHWAY 180 AND FARM-TO-MARKET ROAD 669 IN GAIL, BORDEN COUNTY, TEXAS  
**TCEQ Region:** REGION 07 - MIDLAND

**ID Number(s):**

**PUBLIC WATER SYSTEM/SUPPLY REGISTRATION** 0170010

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

**Date Compliance History Report Prepared:** July 18, 2024

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** July 18, 2019 to July 18, 2024

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

**Name:** Kaisie Hubschmitt

**Phone:** (512) 239-1482

**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	August 26, 2020	(1671231)
Item 2	February 15, 2022	(1794221)
Item 3	May 31, 2022	(1811318)

**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: 08/17/2023    (1951079)  
Self Report? NO      Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(3)(C)  
Description: ARS MCL 3Q2023 - During the 3rd quarter of 2023 the system violated the maximum contaminant level for arsenic with a RAA of 0.017 mg/L. ETT Point  
  
Value = 5

- 2      Date: 11/03/2023    (1951079)

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.106(f)(3)(C)  
Description: ARS MCL 4Q2023 - During the 4th quarter of 2023 the system violated the maximum contaminant level for arsenic with a RAA of 0.019 mg/L. ETT Point Value = 5

3 Date: 12/14/2023 (1951079)  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.110(e)(4)(A)  
30 TAC Chapter 290, SubChapter F 290.110(f)(2)  
30 TAC Chapter 290, SubChapter F 290.110(f)(3)  
Description: DLQOR MR 3Q2023 - The system failed to monitor and/or report distribution disinfectant residuals to the TCEQ for the third quarter of 2023 within the required timeline. ETT Point Value = 1

**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 7/18/2019 and 7/18/2024**

- 1 Date: 08/19/2021 (1772149)  
Self Report? NO Classification: Moderate  
Citation:  
30 TAC Chapter 290, SubChapter F 290.117(e)  
30 TAC Chapter 290, SubChapter F 290.117(h)  
30 TAC Chapter 290, SubChapter F 290.117(i)(3)  
Description: LCR WQP MR 1st 6M2021 - The system failed to monitor for water quality parameters in accordance with TCEQ rules two times during the 1st 6M2021 monitoring period at entry point location RR 669 / US 80; Gail (EP001) and/or the distribution system.
- 2\* Date: 02/08/2023 (1951079)  
Self Report? NO Classification: Moderate  
Citation:  
30 TAC Chapter 290, SubChapter F 290.106(f)(3)(C)  
Description: ARS MCL 1Q2023 - During the 1st quarter of 2023 the system violated the maximum contaminant level for arsenic with a RAA of 0.012 mg/L. ETT Point Value = 5
- 3\* Date: 04/28/2023 (1951079)  
Self Report? NO Classification: Moderate  
Citation:  
30 TAC Chapter 290, SubChapter F 290.106(f)(3)(C)  
Description: ARS MCL 2Q2023 - During the 2nd quarter of 2023 the system violated the maximum contaminant level for arsenic with a RAA of 0.015 mg/L. ETT Point Value = 5
- 4\* Date: 08/17/2023 (1951079)  
Self Report? NO Classification: Moderate  
Citation:  
30 TAC Chapter 290, SubChapter F 290.106(f)(3)(C)  
Description: ARS MCL 3Q2023 - During the 3rd quarter of 2023 the system violated the maximum contaminant level for arsenic with a RAA of 0.017 mg/L. ETT Point Value = 5
- 5 Date: 11/03/2023 (1951079)  
Self Report? NO Classification: Moderate  
Citation:  
30 TAC Chapter 290, SubChapter F 290.106(f)(3)(C)  
Description: ARS MCL 4Q2023 - During the 4th quarter of 2023 the system violated the maximum contaminant level for arsenic with a RAA of 0.019 mg/L. ETT Point Value = 5
- 6 Date: 12/14/2023 (1951079)  
Self Report? NO Classification: Moderate  
Citation:  
30 TAC Chapter 290, SubChapter F 290.110(e)(4)(A)  
30 TAC Chapter 290, SubChapter F 290.110(f)(2)  
30 TAC Chapter 290, SubChapter F 290.110(f)(3)  
Description: DLQOR MR 3Q2023 - The system failed to monitor and/or report distribution disinfectant residuals to the TCEQ for the third quarter of 2023 within the required timeline. ETT Point Value = 1

\* NOVs applicable for the Compliance History rating period 9/1/2018 to 8/31/2023

### **Appendix B**

**All Investigations Conducted During Component Period July 18, 2019 and July 18, 2024**

Item 1*	August 26, 2020**	(1671231)
Item 2	November 09, 2021**	(1772149)
Item 3	November 12, 2021**	(1772420)
Item 4*	February 15, 2022**	(1794221)
Item 5*	May 31, 2022**	(1811318)
Item 6	January 11, 2024	(1951079)
Item 7	January 12, 2024	(1951419)

\* No violations documented during this investigation

\*\*Investigation applicable for the Compliance History Rating period between 09/01/2018 and 08/31/2023.

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
BORDEN COUNTY  
RN101200731

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2024-0163-PWS-E

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Borden 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 they have 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 intersection of State Highway 180 and Farm-to-Market Road 669 in Gail, Borden County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 181 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 December 18, 2023 through January 12, 2024, an investigator documented that:
  - a. The running annual average concentrations of arsenic were 0.012 milligrams per liter ("mg/L") for the first quarter of 2023, 0.015 mg/L for the second quarter of 2023, 0.017 mg/L for the third quarter of 2023, and 0.019 mg/L for the fourth quarter of 2023.
  - b. The Respondent did not submit a Disinfection Level Quarterly Operating Report ("DLQOR") to the Executive Director by the tenth day of the month following the end of each quarter for the third quarter of 2023.

3. The Executive Director recognizes that on June 11, 2024, the Respondent submitted a DLQOR to the Executive Director.

## 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 comply with the maximum contaminant level ("MCL") of 0.010 mg/L for arsenic based on a running annual average, in violation of 30 TEX. ADMIN. CODE § 290.106(f)(3)(C) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
3. As evidenced by Finding of Fact No. 2.b, the Respondent failed to submit a DLQOR to the Executive Director by the tenth day of the month following the end of each quarter, in violation of 30 TEX. ADMIN. CODE § 290.110(e)(4)(A) and (f)(3).
4. 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.
5. An administrative penalty in the amount of \$1,787 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 \$475 of the penalty. The TCEQ has determined that Conclusion of Law No. 2 of this Order qualifies for 100% deferral. Therefore, the remaining amount of \$1,312 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. 5 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: Borden County, Docket No. 2024-0163-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 MCL for arsenic 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 MCL for arsenic.
  - d. Within 1,095 days after the effective date of this Order, return to compliance with the MCL for arsenic based on a running annual average, 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  
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

  
-----  
For the Executive Director

-----  
Date

9/23/2024  
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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.

  
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Signature

8-28-2024  
-----  
Date

Shane Walker  
-----  
Name (Printed or typed)  
Authorized Representative of  
Borden County

County Judge  
-----  
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.