

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2010-1029-PWS-E **TCEQ ID:** RN101437861 **CASE NO.:** 39898  
**RESPONDENT NAME:** Brookeland Fresh Water Supply District

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input checked="" type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Forest Hills Water Supply, 4161 West Recreational Road 255, approximately three miles west of State Highway 96, Jasper County</p> <p><b>TYPE OF OPERATION:</b> Public water supply</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on December 13, 2010. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Ms. Rebecca Clausewitz, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4012; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Mr. Bill McCarty, President, Brookeland Fresh Water Supply District, P.O. Box 5350, Sam Rayburn, Texas 75951  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> April 1, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> May 12, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WATER</b></p> <p>1) Failed to provide sanitary control easements that cover the land within 150 feet of the well or obtain Executive Director approval for a substitute [30 TEX. ADMIN. CODE § 290.41(c)(1)(F)].</p> <p>2) Failed to ensure that the proper backflow prevention device or air gap is installed at all locations where an actual or potential contamination hazard exists [30 TEX. ADMIN. CODE § 290.44(h)(1)(A)].</p> <p>3) Failed to maintain records of the Facility's backflow prevention device programs [30 TEX. ADMIN. CODE § 290.46(f)(3)(B)(vi)].</p> <p>4) Failed to provide a well production capacity of 0.6 gallons per minute ("gpm") per connection [30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(i) and TEX. HEALTH &amp; SAFETY CODE § 341.0315(a)(1)].</p>	<p><b>Total Assessed:</b> \$3,242</p> <p><b>Total Deferred:</b> \$648  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$2,594</p> <p><b>Compliance History Classification:</b>                  Person/CN – Average                  Site/RN – N/A</p> <p><b>Major Source:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. On May 24, 2010, ensured that no direct connection exists between the public drinking water supply and the live bait tank at the bait and tackle store;</p> <p>b. On June 4, 2010, provided a record of the Facility's backflow prevention test conducted on the reduced pressure principle backflow prevention assembly installed at the Twin Dikes Park RV dump station;</p> <p>c. On June 25, 2010, received conditional approval from the TCEQ to replace the broken well pump on Well No. 2 with a new variable speed pump which increases the total well production capacity for Well Nos. 1 and 2 to 177 gpm, which is in excess of the 0.6 gpm per connection required for the 137 connections; and</p> <p>d. On June 28, 2010, ensured that no direct connection exists between the public drinking water supply and the Sam Rayburn Marina lift station.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Within 90 days after the effective date of this Agreed Order, obtain sanitary control easements, or a Commission-approved substitute that covers the land within 150 feet of the well; and</p> <p>b. Within 105 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including a copy of the sanitary control easement or Commission-approved substitute to demonstrate compliance with Ordering Provision a.</p>

Additional ID No(s): Public Water Supply ID No. 1210012



# Penalty Calculation Worksheet (PCW)

TCEQ

<b>DATES</b>	Assigned	17-May-2010			
	PCW	15-Sep-2010	Screening	11-Jun-2010	EPA Due

<b>RESPONDENT/FACILITY INFORMATION</b>					
Respondent	Brookeland Fresh Water Supply District				
Reg. Ent. Ref. No.	RN101437861				
Facility/Site Region	10-Beaumont	Major/Minor Source	Major		

<b>CASE INFORMATION</b>					
Enf./Case ID No.	39898	No. of Violations	4		
Docket No.	2010-1029-PWS-E	Order Type	1660		
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes		
Multi-Media		Enf. Coordinator	Rebecca Clausewitz		
		EC's Team	Enforcement Team 2		
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000		

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** *Subtotal 1* **\$3,360**

### 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% Enhancement *Subtotals 2, 3, & 7* **\$168**

Notes: The enhancement is due to one prior Notice of Violation (NOV) containing violations that are the same as or similar to the violations in the current enforcement action.

**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* **\$326**

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

Total EB Amounts \$412  
Approx. Cost of Compliance \$25,147  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** *Final Subtotal* **\$3,202**

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: [Empty box]

*Final Penalty Amount* **\$3,202**

**STATUTORY LIMIT ADJUSTMENT** *Final Assessed Penalty* **\$3,242**

**DEFERRAL** 20.0% Reduction *Adjustment* **-\$648**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$2,594**

Screening Date: 11-Jun-2010

Docket No.: 2010-1029-PWS-E

PCW

Respondent: Brookeland Fresh Water Supply District

Policy Revision 2 (September 2002)

Case ID No.: 39898

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN101437861

Media [Statute]: Public Water Supply

Enf. Coordinator: Rebecca Clausewitz

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
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)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The enhancement is due to one prior Notice of Violation (NOV) containing violations that are the same as or similar to the violations in the current enforcement action.

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

Screening Date 11-Jun-2010

Docket No. 2010-1029-PWS-E

PCW

Respondent: Brookeland Fresh Water Supply District

Policy Revision 2 (September 2002)

Case ID No. 39898

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101437861

Media [Statute] Public Water Supply

Enf. Coordinator: Rebecca Clausewitz

Violation Number: 1

Rule Cite(s)

30 Tex. Admin. Code § 290.41(c)(1)(F)

Violation Description

Failed to provide sanitary control easements that cover the land within 150 feet of the well or obtain Executive Director approval for a substitute. Specifically, at the time of the investigation, it was documented that the well is located within a greenbelt right-of-way and within 150 feet of a residence, both of which are not owned by the water system.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			X

Percent 10%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to have sanitary control easements surrounding the well site could result in contaminants entering the well and exposing the customers of the Facility to insignificant amounts of contaminants, which would not exceed levels that are protective of human health.

Adjustment: \$900

\$100

Violation Events

Number of Violation Events: 1

71 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$100

One single event is recommended for the one well site.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement
	Extraordinary	
Ordinary		
N/A	X	(mark with x)

Notes

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

Violation Subtotal \$100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$105

This violation Final Assessed Penalty (adjusted for limits) \$105

## Economic Benefit Worksheet

**Respondent:** Brookeland Fresh Water Supply District

**Case ID No.:** 39898

**Reg. Ent. Reference No.:** RN101437861

**Media:** Public Water Supply

**Violation No.:** 1

Percent Interest:	Years of Depreciation:
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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**Delayed Costs**

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$40	1-Apr-2010	30-Apr-2011	1.08	\$0	\$3	\$3
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 pass an ordinance which covers the land within 150 feet of the well, calculated from the date of the investigation to the estimated date of compliance.

**Avoided Costs**

ANNUALIZE [1] 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 [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$40

TOTAL

\$3

Screening Date 11-Jun-2010

Docket No. 2010-1029-PWS-E

PCW

Respondent Brookeland Fresh Water Supply District

Policy Revision 2 (September 2002)

Case ID No. 39898

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101437861

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 290.44(h)(1)(A)

Violation Description

Failed to ensure that the proper backflow prevention device or air gap is installed at all locations where an actual or potential contamination hazard exists. Specifically, at the time of the investigation, there was no evidence of backflow prevention devices or air gaps installed at the Sam Rayburn Marina lift station or at the bait and tackle store.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Failure to have backflow prevention devices or air gaps installed at all locations where contamination hazards exist may allow backflow and siphonage to occur, exposing the customers of the Facility to significant amounts of contaminants which would exceed levels that are protective of human health.

Adjustment \$500

\$500

Violation Events

Number of Violation Events 6

71 Number of violation days

daily	
weekly	
monthly	X
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,000

Six monthly events are recommended (three monthly events per location), calculated from the date of the investigation, April 1, 2010, to the date of case screening, June 11, 2010.

Good Faith Efforts to Comply

10.0% Reduction

\$300

	Before NOV	NOV to EDRPP/Settlement Offer
Extraordinary		
Ordinary		X
N/A	(mark with x)	

Notes

The Respondent achieved compliance with this violation as of June 28, 2010.

Violation Subtotal \$2,700

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$2,850

This violation Final Assessed Penalty (adjusted for limits) \$2,850

## Economic Benefit Worksheet

**Respondent:** Brookeland Fresh Water Supply District  
**Case ID No.:** 39898  
**Reg. Ent. Reference No.:** RN101437861  
**Media:** Public Water Supply  
**Violation No.:** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$62	1-Apr-2010	28-Jun-2010	0.24	\$0	\$1	\$1
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 required to conduct an inspection of each location and ensure a backflow prevention device or air gap is installed. The date required is the date of the investigation and the final date is the date of compliance.

### Avoided Costs

ANNUALIZE [1] 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 [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$62

TOTAL

\$1



Screening Date: 11-Jun-2010

Docket No.: 2010-1029-PWS-E

PCW

Respondent: Brookeland Fresh Water Supply District

Policy Revision 2 (September 2002)

Case ID No.: 39898

PCW Revision October 30, 2008

Reg. Ent. Reference No.: RN101437861

Media [Statute]: Public Water Supply

Enf. Coordinator: Rebecca Clausewitz

Violation Number: 3

Rule Cite(s):

30 Tex. Admin. Code § 290.46(f)(3)(B)(vi)

Violation Description:

Failed to maintain records of the Facility's backflow prevention device programs. Specifically, on the date of the investigation, there were no test records for the reduced pressure principle backflow prevention assembly installed at the Twin Dikes Park RV dump station.

Base Penalty: \$1,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					0%
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
				X	1%

Matrix Notes:

Less than 30% of the rule requirement was not met.

Adjustment: \$990

\$10

Violation Events

Number of Violation Events: 1      71      Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	
single event	X	

Violation Base Penalty: \$10

One single event is recommended.

Good Faith Efforts to Comply

10.0% Reduction

\$1

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes:

The Respondent achieved compliance with this violation as of June 4, 2010.

Violation Subtotal: \$9

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount: \$0

Violation Final Penalty Total: \$10

This violation Final Assessed Penalty (adjusted for limits): \$50

## Economic Benefit Worksheet

**Respondent:** Brookeland Fresh Water Supply District  
**Case ID No.:** 39898  
**Reg. Ent. Reference No.:** RN101437861  
**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	Onetime Costs	EB Amount
No commas or \$							

### 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	\$45	1-Apr-2010	4-Jun-2010	0.18	\$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 amount to create a record-keeping system for the Twin Dikes Park RV dump station's backflow prevention assembly test records, calculated from the date of the investigation to the date of compliance.

### Avoided Costs

ANNUALIZE [1] 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 [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$45

TOTAL

\$0

Screening Date 11-Jun-2010

Docket No. 2010-1029-PWS-E

PCW

Respondent Brookeland Fresh Water Supply District

Policy Revision 2 (September 2002)

Case ID No. 39898

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101437861

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 290.45(b)(1)(C)(i) and Tex. Health & Safety Code § 041.0315(a)(1)

Violation Description

Failed to provide a well production capacity of 0.6 gallons per minute ("gpm") per connection. Specifically, with 137 connections, a minimum of 82 gpm of well production should be provided. On the date of the investigation, the Facility had a well production capacity of 67 gpm, which is a 23% deficiency.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential		X		25%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes

Without adequate well production, the customers of the water system could experience water shortages or outages which could result in a significant amount of contaminants entering the system which would not exceed levels that are protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1 Number of violation days 71

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$250

One quarterly event is recommended, calculated from the date of the investigation, April 1, 2010, to the date of case screening, June 11, 2010.

Good Faith Efforts to Comply

10.0% Reduction

\$25

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with x)

Notes The Respondent achieved compliance with this violation as of June 25, 2010.

Violation Subtotal \$225

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$408

Violation Final Penalty Total \$238

This violation Final Assessed Penalty (adjusted for limits) \$238

## Economic Benefit Worksheet

**Respondent:** Brookeland Fresh Water Supply District  
**Case ID No.:** 38898  
**Reg. Ent. Reference No.:** RN101437861  
**Media:** Public Water Supply  
**Violation No.:** 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$25,000	1-Apr-2010	25-Jun-2010	0.23	\$19	\$388	\$408
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 re-work Well No. 2 and install a larger service pump, calculated from the date of the investigation to the date of compliance.

### Avoided Costs

ANNUALIZE [1] 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 [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$25,000

TOTAL

\$408

## Compliance History Report

Customer/Respondent/Owner-Operator: CN600624852 Brookeland Fresh Water Supply District Classification: AVERAGE Rating: 1.73

Regulated Entity: RN101437861 Forest Hills Water Supply Classification: Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1210012  
WATER LICENSING LICENSE 1210012

Location: 4161 West Recreational Road 255, approximately 3 miles west of SH 96 in Jasper County, Texas

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: May 26, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: May 26, 2005 to May 26, 2010

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Rebecca Clausewitz Phone: (210) 403-4012

### Site Compliance History Components

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
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A

#### Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
- |   |            |          |
|---|------------|----------|
| 1 | 05/11/2006 | (459262) |
| 2 | 12/15/2006 | (532679) |
| 3 | 11/28/2007 | (574149) |
| 4 | 05/12/2010 | (801805) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |  |          |                          |
|--------------|--|----------|--------------------------|
| Date:        | 05/11/2006   | (459262) | CN600624852              |
| Self Report? | NO   |          | Classification: Minor    |
| Citation:    | 30 TAC Chapter 290, SubChapter D 290.46(l)   |          |                          |
| Description: | Failure to flush all dead-end mains at least once a month.   |          |                          |
| Self Report? | NO   |          | Classification: Minor    |
| Citation:    | 30 TAC Chapter 290, SubChapter D 290.46(v)   |          |                          |
| Description: | Failure to all electrical wiring in conduit at well # 1.   |          |                          |
| Self Report? | NO   |          | Classification: Minor    |
| Citation:    | 30 TAC Chapter 290, SubChapter F 290.109(c)(1)(A)  |          |                          |
| Description: | Failure to have sample sites, which are representative of the water system.                                |          |                          |
| Self Report? | NO   |          | Classification: Moderate |
| Citation:    | 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(C)(i)<br>30 TAC Chapter 290, SubChapter D 290.45(c)(1)(B)(i) |          |                          |
| Description: | Failure to meet this agency's "Minimum Water System Capacity Requirements" for well production.            |          |                          |

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(C)(iv)  
30 TAC Chapter 290, SubChapter D 290.45(c)(1)(B)(iv)

Description: Failure to meet this agency's "Minimum Water System Capacity Requirements" for pressure tank capacity.

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



<b>IN THE MATTER OF AN</b>	<b>§</b>	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	<b>§</b>	
<b>CONCERNING</b>	<b>§</b>	
<b>BROOKELAND FRESH WATER</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>SUPPLY DISTRICT</b>	<b>§</b>	
<b>RN101437861</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>

## AGREED ORDER DOCKET NO. 2010-1029-PWS-E

### I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Brookeland Fresh Water Supply District ("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 appear before the Commission and together stipulate that:

1. The Respondent owns and operates a public water supply at 4161 West Recreational Road 255, approximately three miles west of State Highway 96 in Jasper County, Texas (the "Facility") that has approximately 137 service connections and serves at least 25 people per day for at least 60 days per year.
2. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
3. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 17, 2010.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of Three Thousand Two Hundred Forty-Two Dollars (\$3,242) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Two Thousand Five Hundred Ninety-Four Dollars (\$2,594) of the administrative penalty and Six Hundred Forty-Eight Dollars (\$648) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to

- timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
  7. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
  8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
  9. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
    - a. On May 24, 2010, ensured that no direct connection exists between the public drinking water supply and the live bait tank at the bait and tackle store;
    - b. On June 4, 2010, provided a record of the Facility's backflow prevention test conducted on the reduced pressure principle backflow prevention assembly installed at the Twin Dikes Park RV dump station;
    - c. On June 25, 2010, received conditional approval from the TCEQ to replace the broken well pump on Well No. 2 with a new variable speed pump which increases the total well production capacity for Well Nos. 1 and 2 to 177 gallons per minute ("gpm"), which is in excess of the 0.6 gpm per connection required for the 137 connections; and
    - d. On June 28, 2010, ensured that no direct connection exists between the public drinking water supply and the Sam Rayburn Marina lift station.
  10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
  11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to provide sanitary control easements that cover the land within 150 feet of the well or obtain Executive Director approval for a substitute, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(1)(F), as documented during an investigation conducted on April 1, 2010.



2. Failed to ensure that the proper backflow prevention device or air gap is installed at all locations where an actual or potential contamination hazard exists, in violation of 30 TEX. ADMIN. CODE § 290.44(h)(1)(A), as documented during an investigation conducted on April 1, 2010.
3. Failed to maintain records of the Facility's backflow prevention device programs, in violation of 30 TEX. ADMIN. CODE § 290.46(f)(3)(B)(vi), as documented during an investigation conducted on April 1, 2010.
4. Failed to provide a well production capacity of 0.6 gpm per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(i) and TEX. HEALTH & SAFETY CODE § 341.0315(a)(1), as documented during an investigation conducted on April 1, 2010.

### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Brookeland Fresh Water Supply District, Docket No. 2010-1029-PWS-E" to:  

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Within 90 days after the effective date of this Agreed Order, obtain sanitary control easements, or a Commission-approved substitute as delineated in 30 TEX. ADMIN. CODE § 290.41(c)(1)(F)(iv)(I) through (III), that covers the land within 150 feet of the well, in accordance with 30 TEX. ADMIN. CODE § 290.41; and
  - b. Within 105 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including a copy of the sanitary control easement or Commission-approved substitute to demonstrate compliance with Ordering Provision No. 2.a. The

certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section Manager  
Beaumont Regional Office  
Texas Commission on Environmental Quality  
3870 Eastex Freeway  
Beaumont, Texas 77703-1830

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed 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. This Agreed 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 Agreed 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.
6. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed 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 Agreed 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.

7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director


\_\_\_\_\_  
Date 12/21/2010

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

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

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

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

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 10-14-10

BILL McCARTY  
Name (Printed or typed)  
Authorized Representative of  
Brookeland Fresh Water Supply District

PRESIDENT BFWSD  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.