



Control Number: 46309



Item Number: 10

Addendum StartPage: 0

DOCKET NO. 46309

PETITION FOR AN ORDER
APPOINTING A TEMPORARY
MANAGER TO AERO VALLEY
WATER SERVICE IN DENTON
COUNTY

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PUBLIC UTILITY COMMISSION
OF TEXAS

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COMMISSION STAFF'S LIST OF WITNESSES AND EXHIBITS

Order No. 1, issued on September 23, 2016, requested that parties file a list of any witnesses and exhibits that will be presented at the October 7, 2016 hearing. The Order required the parties to submit this information no later than October 3, 2016. Pursuant to this order Commission Staff submits the following list of witnesses and exhibits.

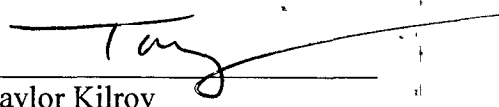
Witnesses:

1. Patricia Garcia, Engineering Specialist, Water Utility Division of the Public Utility Commission of Texas

Exhibits:

1. Default Order to Revoke Aero Valley's CCN
2. E-mail to Commission Staff Regarding Abandonment of Aero Valley
3. TCEQ Default Orders and Final Default Judgment and Permanent Injunction
4. TCEQ Order Appointing Eric Tamayo Temporary Manager of Aero Valley
5. TCEQ Order Appointing Mark Patterson Temporary Manager of Aero Valley

Respectfully Submitted,



Taylor Kilroy
Attorney, Oversight and Enforcement Division
State Bar No. 24087844
(512) 936-7127 T
(512) 936-7268 F
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

CERTIFICATE OF SERVICE

I certify that on October 3, 2016, a copy of this document was sent certified mail, return receipt requested, to the last known address of Aero Valley Water Service (Aero Valley) in the Commission's and TCEQ's records:

Shawn Horvath
5281 Kelly Drive
Roanoke, Texas 76262

Shawn Horvath
3660 Boulder Highway
Las Vegas, Nevada 89121-1651



Taylor Kilroy

Exhibit 1

Default Order to Revoke Aero Valley's CCN

DOCKET NO. 45277

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PUBLIC UTILITY COMMISSION
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OF TEXAS

PETITION TO REVOKE AERO §
VALLEY WATER SERVICE'S §
CERTIFICATE OF PUBLIC §
CONVENIENCE AND NECESSITY §
PURSUANT TO TEX. WATER CODE §
ANN. § 13.254 AND 16 TAC § 24.113 §

DEFAULT ORDER

This Order addresses the petition of the Public Utility Commission of Texas (Commission) Staff to revoke the Certificate of Public Convenience and Necessity (CCN) of Aero Valley Water Service (Aero Valley) regarding Aero Valley's violations of the Texas Water Code and Commission rules (Petition). Commission Staff's Petition is granted and Aero Valley's CCN No. 11401 is revoked.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

1. Aero Valley is a retail public utility granted CCN No. 11401 by the Texas Commission on Environmental Quality (TCEQ) to provide water service on November, 1, 1979.
2. At that time, Aero Valley was associated with one public water system (PWS).
3. On December 4, 1980, Aero Valley formally transferred the ownership of CCN No. 11401 to Jesse Miller.
4. At some point between December 4, 1980 and September 20, 2001, ownership of the PWS and all the real property of CCN No. 11401 was transferred to Shawn M. Horvath.
5. No application for a sale, transfer, or merger (STM Application) for CCN No. 11401 was approved to record this sale.
6. In the absence of a completed STM Application, Mr. Miller remains the holder of CCN No. 11401.
7. Mr. Miller is incapable of providing continuous and adequate service to customers because he no longer owns a PWS capable of providing service in the certificated area.

8. On October 23, 2015, Commission Staff filed the Petition and provided notice of opportunity for hearing seeking revocation of Aero Valley's CCN No. 11401.
9. The Petition included the required disclosure in at least 12-point, bold-face type.
10. The Petition was sent by certified mail, return receipt requested, to the last known address of the owner of CCN No. 11401 in the Commission's records, to the last known business address of Aero Valley in the Commission's records, and to the address used in TCEQ proceedings.
11. More than 30 days have passed since service of the Petition and notice of opportunity for hearing.
12. Aero Valley did not request a hearing on the merits.

II. Conclusions of Law

1. Tex. Water Code. Ann. § 13.242 (West 2008 and Supp. 2015) (TWC) provides, in part, that a "utility ... may not in any way render ... water or sewer utility service directly or indirectly to the public without first having obtained from the utility commission a certificate that the present or future public convenience and necessity will require that installation, operation, or extension...."
2. Under 16 TAC § 24.3(15), a CCN is defined as a permit issued by the commission which authorizes and obligates a retail public utility to furnish, make available, render, or extend continuous and adequate retail water or sewer service to a specified geographic area.
3. Under 16 TAC § 24.3(58), a retail public utility is defined as any person corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both for compensation.
4. TWC § 13.250 and 16 TAC § 24.114 require a retail public utility that possesses a CCN to provide "continuous and adequate service."
5. If the Commission finds that a retail public utility that possesses a CCN "has never provided, is no longer providing, is incapable of providing, or has failed to provide continuous and adequate service in the area, or part of the area, covered by the certificate"

in violation of TWC § 13.250 and 16 TAC § 24.114, the Commission may revoke the CCN pursuant to TWC § 13.254 and 16 TAC § 24.113.

6. Aero Valley failed to meet the performance requirements for a CCN holder in TWC § 13.250 and 16 TAC § 24.114.
7. Aero Valley is incapable of providing continuous and adequate service in the area covered by CCN No. 11401.
8. Issuance of a default order against Aero Valley is appropriate because Aero Valley failed to request a hearing within 30 days of service of the notice of an opportunity for a hearing, as provided in 16 TAC § 22.183(a).
9. Pursuant to 16 TAC § 22.183, the requirements for disposition by default have been met in this proceeding.

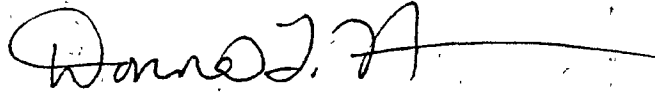
III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

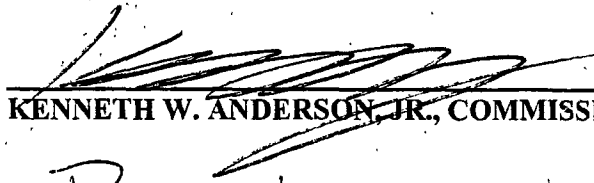
1. Commission Staff's Petition is granted.
2. Aero Valley's CCN No. 11401 is revoked.
3. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.
4. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

Signed at Austin, Texas the 25th day of April 2016.

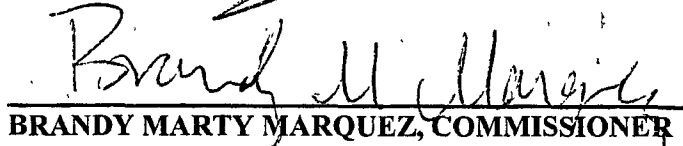
PUBLIC UTILITY COMMISSION OF TEXAS



DONNA L. NELSON, CHAIRMAN



KENNETH W. ANDERSON, JR., COMMISSIONER



BRANDY MARTY MARQUEZ, COMMISSIONER

Exhibit 2

E-mail to Commission Staff Regarding Abandonment of Aero Valley

Kilroy, Taylor

From: Eric Tamayo <ETamayo@town.northlake.tx.us>
Sent: Monday, October 19, 2015 11:43 AM
To: Garcia, Patricia
Cc: Fuentes, Lisa
Subject: RE: Aero Valley

Patty,

Mr. Horvath stopped by the office this morning regarding giving the Town the system. He said all he is asking the Town to pay is a lien to Barco Well Drilling in the amount of \$1,901.00. According to him, he has been transferred to Las Vegas for his job. He will be in town until Sunday. He also said his pump has gone down as of today and his customers do not have water. He said that he called some well drillers, but no one has gotten back with him. He has not billed for the last 4 months, they pay a flat fee of \$35 a month. He currently has 28 customers according to him. From the sound of it, he just wants to leave town without restoring water to his customers. Not sure how we want to handle this on such a short notice. What do you recommend the Town do at this point, is there some type of temporary operation? Most likely we would have to pay for the pump to be replaced ASAP.

Thank you,

Eric J. Tamayo
Public Works Director
Town of Northlake
Office: 940-242-5704
Cell: 940-465-1664
etamayo@town.northlake.tx.us



From: Garcia, Patricia [mailto:Patricia.Garcia@puc.texas.gov]
Sent: Monday, July 20, 2015 3:07 PM
To: Eric Tamayo <ETamayo@town.northlake.tx.us>
Subject: RE: Aero Valley

Eric,

Just to clarify this will be for the week of the 27th.

Thanks,
Patty

From: Eric Tamayo [mailto:ETamayo@town.northlake.tx.us]
Sent: Monday, July 20, 2015 3:06 PM

To: Garcia, Patricia
Subject: RE: Aero Valley

Let me check with Drew to see what works for him.

Thanks,

Eric J. Tamayo
Public Works Director
Town of Northlake
Office: 940-242-5704
Cell: 940-465-1664
etamayo@town.northlake.tx.us



From: Garcia, Patricia [<mailto:Patricia.Garcia@puc.texas.gov>]
Sent: Monday, July 20, 2015 1:36 PM
To: Eric Tamayo
Subject: RE: Aero Valley

Eric,

These are the days and times my supervisor is available.

Tuesday – 1:30-4
Wednesday – 10-11 and 3-4
Thursday – 10-11 and 1:30-4

Let me know what works best for you and if you'll need me to get a conference line for the meeting.

Thanks,
Patty Garcia

From: Eric Tamayo [<mailto:ETamayo@town.northlake.tx.us>]
Sent: Monday, July 20, 2015 11:27 AM
To: Garcia, Patricia
Subject: RE: Aero Valley

Patty,

I will be out of the office this week. Next week some time will work for us. Let me know what works for you next week.

Thanks,

Eric J. Tamayo

Public Works Director
Town of Northlake
Office: 940-242-5704
Cell: 940-465-1664
etamayo@town.northlake.tx.us



From: Garcia, Patricia [<mailto:Patricia.Garcia@puc.texas.gov>]
Sent: Monday, July 20, 2015 9:27 AM
To: Eric Tamayo
Subject: Aero Valley

Eric,

I was the receivership coordinator at TCEQ. We spoke about Aero Valley a few times. I am now with the Public Utility Commission of Texas. My supervisor, Lisa Fuentes, and I would like to talk to you about this water system again. Do you have some time this week?

Please let me know what times you are available and on what days so I can coordinate with my supervisor.

Thanks,
Patty Garcia

Patricia G. Garcia
Engineering Specialist
Patricia.Garcia@puc.texas.gov
512-936-7222

Public Utility Commission of Texas
Water Utility Regulations
1701 N. Congress Ave
P.O. Box 13326
Austin, TX 78711

Exhibit 3

TCEQ Default Orders and Final Default Judgment and Permanent Injunction

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN §
ENFORCEMENT ACTION §
CONCERNING §
SHAWN HORVATH DBA AERO §
VALLEY WATER SERVICE §
PUBLIC WATER SUPPLY ID NO. §
0610243; CERTIFICATE OF §
CONVENIENCE AND NECESSITY §
NO. 11401; REGULATED ENTITY §
ID NO. RN101198331 §

BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2002-0867-PWS-E

At its JUN 29 2005 agenda, the Texas Commission on Environmental Quality, formerly known as the Texas Natural Resource Conservation Commission ("Commission" or "TCEQ" or "TNRCC") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Shawn Horvath dba Aero Valley Water Service ("Mr. Horvath").

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

FINDINGS OF FACT

1. Mr. Horvath owns and operates a public water supply system at 950 Airport Road in Roanoke, Denton County, Texas (the "Facility").
2. The Facility has approximately seventy (70) service connections and serves at least 25 people per day for at least 60 days per year.
3. During an inspection on September 20, 2001, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Mr. Horvath:
 - a. Failed to collect and analyze at least one water sample per month for bacteriological analysis and to provide public notification for sampling deficiency.
 - b. Failed to develop and maintain a chemical and microbiological monitoring plan.

- c. Failed to provide a minimum total storage capacity of 200 gallons per connection. The system is 91.4% deficient.
- d. Failed to provide a minimum of two service pumps with a minimum pumping capacity of 2.0 gallons per minute per connection. The system is 85.7% deficient.
- e. Failed to provide a minimum pressure tank capacity of 20 gallons per minute per connection. The system is 91% deficient.
- f. Failed to submit planning material.
- g. Failed to provide mechanical chlorination equipment so that continuous and effective disinfection can be secured under all conditions.
- h. Failed to maintain a minimum of 0.2 milligrams per liter (mg/L) free chlorine residual throughout the distribution system.
- i. Failed to possess a chlorine test kit which uses the Diethyl-P-Phenylenediamine (DPD) method to determine the free chlorine residual.
- j. Failed to perform chlorine residual tests at least once every seven days.
- k. Failed to maintain on hand a supply of calcium hypochlorite disinfectant.
- l. Failed to enclose all facilities in an intruder resistant fence.
- m. Failed to provide accurate metering devices at each service connection to provide water usage data.
- n. Failed to adopt an adequate plumbing ordinance, regulations or a service agreement with provisions for proper enforcement to ensure that neither cross connections nor unacceptable plumbing practices are permitted.
- o. Failed to complete a customer service inspection certification prior to providing continuous water service to new construction, on any existing service when the water purveyor has reason to believe that cross-connection or other unacceptable plumbing practices exist, or after any material improvement, correction, or addition to the private plumbing facilities.
- p. Failed to maintain operating records.
- q. Failed to establish a cross-connection control program.

- r. Failed to flush all dead-end mains monthly or more frequent to maintain water quality.
- s. Failed to prepare and maintain an accurate and up-to-date map of the distribution system.
- t. Failed to post a legible sign of the system's ownership at the Facility.
- u. Failed to have the system under the direct supervision of an adequately certified operator.
- v. Failed to design, fabricate, erect, test, and disinfect all facilities for potable water storage in strict accordance with current American Water Works Association (AWWA) standards.
- w. Failed to provide all pressure tanks with pressure release devices and to provide the pressure tanks with an easily readable pressure gauge.
- x. Failed to inspect the ground storage tank annually.
- y. Failed to inspect the pressure tanks annually.
- z. Failed to seal the wellhead with the use of gaskets or sealing compound and to provide the well with a screened casing vent.
- aa. Failed to provide a suitable sampling tap on the well discharge line.
- bb. Failed to install a flow meter on the well pump discharge line.
- cc. Failed to provide American National Standards Institute/National Sanitation Foundation (ANSI/NSF) certification for all chemicals used in treatment of water supplied.
- dd. Failed to initiate a maintenance program to ensure the good working condition and appearance of the system's facilities and equipment.
- ee. Failed to equip all air compressor injection lines for pressure tanks with a filter or other device to prevent compressor lubricants and other contaminants from entering the pressure tank.
- ff. Failed to provide a well casing 18 inches above the elevation of the finished floor of the pump house or natural ground surface.

- gg. Failed to operate a water distribution system to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system.
 - hh. Failed to collect the appropriate number of repeat bacteriological samples during the month of March 2002 and to provide public notification of the sampling deficiency.
4. Mr. Horvath received notice of the violations on or about October 15, 2001 and June 3, 2002.
 5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Shawn Horvath dba Aero Valley Water Service" (the "EDPRP") in the TCEQ Chief Clerk's office on February 19, 2004.
 6. By letter dated February 19, 2004, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Horvath with notice of the EDPRP. According to the return receipt "green card," Mr. Horvath received notice of the EDPRP on February 24, 2004, as evidenced by the signature on the card.
 7. More than 20 days have elapsed since Mr. Horvath received notice of the EDPRP, provided by the Executive Director. Mr. Horvath failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Horvath is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch.341 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Horvath failed to collect and analyze at least one water sample per month for bacteriological analysis and to provide public notification for sampling deficiency, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c) and 290.122(c), and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. As evidenced by Finding of Fact No. 3.b., Mr. Horvath failed to develop and maintain a chemical and microbiological monitoring plan, in violation of 30 TEX. ADMIN. CODE § 290.121.
4. As evidenced by Finding of Fact No. 3.c., Mr. Horvath failed to provide a minimum total storage capacity of 200 gallons per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(ii) and TEX. HEALTH & SAFETY CODE § 341.0315(c).

5. As evidenced by Finding of Fact No. 3.d., Mr. Horvath failed to provide a minimum of two service pumps with a minimum pumping capacity of 2.0 gallons per minute per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(iii) and TEX. HEALTH & SAFETY CODE § 341.0315(c);
6. As evidenced by Finding of Fact No. 3.e., Mr. Horvath failed to provide a minimum pressure tank capacity of 20 gallons per minute per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(iv) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
7. As evidenced by Finding of Fact No. 3.f., Mr. Horvath failed to submit planning material, in violation of 30 TEX. ADMIN. CODE § 290.39(e).
8. As evidenced by Finding of Fact No. 3.g., Mr. Horvath failed to provide mechanical chlorination equipment so that continuous and effective disinfection can be secured under all conditions, in violation of 30 TEX. ADMIN. CODE § 290.42(e)(3).
9. As evidenced by Finding of Fact No. 3.h., Mr. Horvath failed to maintain a minimum of 0.2 mg/L free chlorine residual throughout the distribution system, in violation of 30 TEX. ADMIN. CODE § 290.110(b)(4).
10. As evidenced by Finding of Fact No. 3.i., Mr. Horvath failed to possess a chlorine test kit which uses the DPD method to determine the chlorine residual, in violation of 30 TEX. ADMIN. CODE § 290.110(d)(3).
11. As evidenced by Finding of Fact No. 3.j., Mr. Horvath failed to perform chlorine residual tests at least once every seven days, in violation of 30 TEX. ADMIN. CODE § 290.110(c)(5)(A).
12. As evidenced by Finding of Fact No. 3.k., Mr. Horvath failed to maintain on hand a supply of calcium hypochlorite disinfectant, in violation of 30 TEX. ADMIN. CODE § 290.46(h).
13. As evidenced by Finding of Fact No. 3.l., Mr. Horvath failed to enclose all facilities in an intruder resistant fence, in violation of 30 TEX. ADMIN. CODE §§ 290.41(c)(3)(O) and 290.43(e);
14. As evidenced by Finding of Fact No. 3.m., Mr. Horvath failed to provide accurate metering devices at each service connection to provide water usage data, in violation of 30 TEX. ADMIN. CODE § 290.44(d)(4).
15. As evidenced by Finding of Fact No. 3.n., Mr. Horvath failed to adopt an adequate plumbing ordinance, regulations or a service agreement with provisions for proper enforcement to

- ensure that neither cross connections nor unacceptable plumbing practices are permitted, in violation of 30 TEX. ADMIN. CODE § 290.46(i).
16. As evidenced by Finding of Fact No. 3.o., Mr. Horvath failed to complete a customer service inspection certification prior to providing continuous water service to new construction, on any existing service when the water purveyor has reason to believe that cross-connection or other unacceptable plumbing practices exist, or after any material improvement, correction, or addition to the private plumbing facilities, in violation of 30 TEX. ADMIN. CODE § 290.46(j).
 17. As evidenced by Finding of Fact No. 3.p., Mr. Horvath failed to maintain operating records, in violation of 30 TEX. ADMIN. CODE § 290.46(f).
 18. As evidenced by Finding of Fact No. 3.q., Mr. Horvath failed to establish a cross-connection control program, in violation of 30 TEX. ADMIN. CODE § 290.44(h).
 19. As evidenced by Finding of Fact No. 3.r., Mr. Horvath failed to flush all dead-end mains monthly or more frequently to maintain water quality, in violation of 30 TEX. ADMIN. CODE § 290.46(l).
 20. As evidenced by Finding of Fact No. 3.s., Mr. Horvath failed to prepare and maintain an accurate and up-to-date map of the distribution system, in violation of 30 TEX. ADMIN. CODE § 290.46(n)(2).
 21. As evidenced by Finding of Fact No. 3.t., Mr. Horvath failed to post a legible sign of the system's ownership at the Facility, in violation of 30 TEX. ADMIN. CODE § 290.46(t).
 22. As evidenced by Finding of Fact No. 3.u., Mr. Horvath failed to have the system under the direct supervision of an adequately certified operator, in violation of 30 TEX. ADMIN. CODE § 290.46(e)(1) and TEX. HEALTH & SAFETY CODE § 341.033.
 23. As evidenced by Finding of Fact No. 3.v., Mr. Horvath failed to design, fabricate, erect, test, and disinfect all facilities for potable water storage in strict accordance with current AWWA standards, in violation of 30 TEX. ADMIN. CODE § 290.43(c), (c)(1), (c)(2), (c)(3) and (c)(4).
 24. As evidenced by Finding of Fact No. 3.w., Mr. Horvath failed to provide all pressure tanks with pressure release devices and to provide the pressure tanks with an easily readable pressure gauge, in violation of 30 TEX. ADMIN. CODE § 290.43(d)(2).
 25. As evidenced by Finding of Fact No. 3.x., Mr. Horvath failed to inspect the ground storage tank annually, in violation of 30 TEX. ADMIN. CODE § 290.46(m)(1)(A).

26. As evidenced by Finding of Fact No. 3.y., Mr. Horvath failed to inspect the pressure tanks annually, in violation of 30 TEX. ADMIN. CODE § 290.46(m)(1)(B).
27. As evidenced by Finding of Fact No. 3.z., Mr. Horvath failed to seal the wellhead with the use of gaskets or sealing compound and to provide the well with a screened casing vent, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(K).
28. As evidenced by Finding of Fact No. 3.aa., Mr. Horvath failed to provide a suitable sampling tap on the well discharge line, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(M).
29. As evidenced by Finding of Fact No. 3.bb., Mr. Horvath failed to install a flow meter on the well pump discharge line, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(N).
30. As evidenced by Finding of Fact No. 3.cc., Mr. Horvath failed to provide ANSI/NSF certification for all chemicals used in treatment of water supplied, in violation of 30 TEX. ADMIN. CODE § 290.42(i).
31. As evidenced by Finding of Fact No. 3.dd., Mr. Horvath failed to initiate a maintenance program to ensure the good working condition and appearance of the system's facilities and equipment, in violation of 30 TEX. ADMIN. CODE § 290.46(m).
32. As evidenced by Finding of Fact No. 3.ee., Mr. Horvath failed to equip all air compressor injection lines for pressure tanks with a filter or other device to prevent compressor lubricants and other contaminants from entering the pressure tank, in violation of 30 TEX. ADMIN. CODE § 290.43(d)(3) and TEX. HEALTH & SAFETY CODE § 341.036.
33. As evidenced by Finding of Fact No. 3.ff., Mr. Horvath failed to provide a well casing 18 inches above the elevation of the finished floor of the pump house or natural ground surface, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(B).
34. As evidenced by Finding of Fact No. 3.gg., Mr. Horvath failed operate a water distribution system to provide a minimum pressure of 35 psi throughout the distribution system, in violation of 30 TEX. ADMIN. CODE § 290.46(r).
35. As evidenced by Finding of Fact No. 3.hh., Mr. Horvath failed to collect the appropriate number of repeat bacteriological samples during the month of March 2002 and to provide public notification of the sampling deficiency, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(i) and 290.122(c).
36. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Mr. Horvath with proper notice of the EDP RP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

37. As evidenced by Finding of Fact No. 7, Mr. Horvath has failed to file a timely answer to the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Horvath and assess the penalty recommended by the Executive Director.
38. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Mr. Horvath for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
39. An administrative penalty in the amount of nineteen thousand four hundred dollars (\$19,400.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049.
40. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Mr. Horvath is assessed an administrative penalty in the amount of nineteen thousand four hundred dollars (\$19,400.00) for violations of TEX. HEALTH & SAFETY CODE ch. 341 and rules of the TCEQ. The imposition of this administrative penalty and Mr. Horvath's compliance with all the terms and conditions set forth in this Order completely resolve 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 other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Shawn Horvath dba Aero Valley Water Service; Docket No. 2002-0867-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. Mr. Horvath shall undertake the following technical requirements:

- a. Within 10 days after the effective date of this Order:
 - i. Develop a chemical and microbiological monitoring plan, in accordance with 30 TEX. ADMIN. CODE § 290.121;
 - ii. Begin maintaining a free chlorine residual of 0.2 mg/L in the far reaches of the distribution system, in accordance with 30 TEX. ADMIN. CODE § 290.110(b)(4);
 - iii. Begin conducting and recording weekly chlorine residual tests, in accordance with 30 TEX. ADMIN. CODE § 290.110(c)(5)(A);
 - iv. Begin collecting and analyzing at least one water sample per month for bacteriological analysis, in accordance with 30 TEX. ADMIN. CODE § 290.109(c);
 - v. Begin flushing dead-end mains monthly or more often if required, in accordance with 30 TEX. ADMIN. CODE § 290.46(l);
 - vi. Initiate a maintenance program to ensure the good working condition and appearance of the system's facilities and equipment, in accordance with 30 TEX. ADMIN. CODE § 290.46(m);
 - vii. Acquire a chlorine test kit which uses the DPD method to determine the chlorine residual, in accordance with 30 TEX. ADMIN. CODE § 290.110(d)(3); and
 - viii. Begin maintaining the water system under the direct supervision of an adequately certified operator be at all times, in accordance with 30 TEX. ADMIN. CODE § 290.46(e)(1).
- b. Within 25 days after the effective date of this Order, submit certification of compliance with Ordering Provisions 2.a.i.-2.a.viii.;

- c. Within 30 days after the effective date of this Order:
- i. Begin maintaining a supply of calcium hypochlorite disinfectant, in accordance with 30 TEX. ADMIN. CODE § 290.46(h);
 - ii. Adopt an adequate plumbing ordinance, regulations or service agreement with provisions for proper enforcement to ensure that neither cross connections nor unacceptable plumbing practices are permitted, in accordance with 30 TEX. ADMIN. CODE § 290.46(i);
 - iii. Complete service inspection certifications prior to providing continuous water service to new construction, or on any existing service when the water purveyor has reason to believe that cross connection exist, in accordance with 30 TEX. ADMIN. CODE § 290.46(j);
 - iv. Begin maintaining an accurate and up-to-date map of the distribution system so that valves and mains are easily located during emergencies, in accordance with 30 TEX. ADMIN. CODE § 290.46(n)(2);
 - v. Post a legible sign at the production, treatment, and storage facility. The sign shall be located in plain view of the public and shall provide the name of the water supply and an emergency telephone number where a responsible official can be contacted, in accordance with 30 TEX. ADMIN. CODE § 290.46(t);
 - vi. Provide a suitable sampling tap on the well discharge line, in accordance with 30 TEX. ADMIN. CODE § 290.41(c)(3)(M);
 - vii. Conduct and record the results of the annual ground storage tank inspections, in accordance with 30 TEX. ADMIN. CODE § 290.46(m)(1)(A);
 - viii. Conduct and record the results of the annual pressure tank inspections, in accordance with 30 TEX. ADMIN. CODE § 290.46(m)(1)(B);
 - ix. Equip the water system with a flow meter on the well pump discharge line, in accordance with 30 TEX. ADMIN. CODE § 290.41(c)(3)(N);
 - x. Begin using chemicals that conform to ANSI/NSF standards, in accordance with 30 TEX. ADMIN. CODE § 290.42(i); and
 - xi. Compile and maintain operating records and reports, in accordance with 30 TEX. ADMIN. CODE § 290.46(f).

- d. Within 45 days after the effective date of this Order, submit certification of compliance with Ordering Provisions 2.c.i.-2.c.xi.;
- e. Within 60 days after the effective date of this Order:
 - i. Submit as-built drawings of the water supply system, in accordance with 30 TEX. ADMIN. CODE § 290.39(e);
 - ii. Begin using mechanical chlorination equipment so that continuous and effective disinfection can be secured under all conditions, in accordance with 30 TEX. ADMIN. CODE § 290.42(e)(3);
 - iii. Equip the pressure tanks with pressure release devices and with easily readable pressure gauges, in accordance with 30 TEX. ADMIN. CODE § 290.43(d)(2);
 - iv. Install accurate metering devices at each service connection to provide water usage data, in accordance with 30 TEX. ADMIN. CODE § 290.44(d)(4);
 - v. Install a screened well casing vent on the well, in accordance with 30 TEX. ADMIN. CODE § 290.41(c)(3)(K); and
 - vi. Seal the wellhead with gaskets or a pliable crack resistant sealing compound, in accordance with 30 TEX. ADMIN. CODE § 290.41(c)(3)(K).
- f. Within 75 days after the effective date of this Order, submit certification of compliance with Ordering Provisions 2.e.i.-2.e.vi.;
- g. Within 90 days after the effective date of this Order:
 - i. Establish a cross connection program to seek out and eliminate potential cross connections at non-residential locations, in accordance with 30 TEX. ADMIN. CODE § 290.44(h);
 - ii. Equip all air compressor injection lines for pressure tanks with a filter or other device to prevent compressor lubricants and other contaminants from entering the pressure tank, in accordance with 30 TEX. ADMIN. CODE § 290.43(d)(3); and
 - iii. Raise the well casing 18 inches above the elevation of the finished floor of the pump house or natural ground surface, in accordance with 30 TEX. ADMIN. CODE § 290.41(c)(3)(B).

- h. Within 105 days after the effective date of this Order, submit certification of compliance with Ordering Provisions 2.g.i.-2.g.iii.
- i. Within 180 days after the effective date of this Order:
 - i. Install a water storage tank, to include an overflow pipe, water level indicator, roof hatch, roof vent and access ladder that conforms with current AWWA standards, in accordance with 30 TEX. ADMIN. CODE § 290.43(c);
 - ii. Provide a minimum total storage capacity of 200 gallons per connection, in accordance with 30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(ii);
 - iii. Provide a minimum of two service pumps with a minimum pumping capacity of 2.0 gallons per minute per connection, in accordance with 30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(iii);
 - iv. Provide a minimum pressure tank capacity of 20 gallons per connection, in accordance with 30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(iv);
 - v. Operate the water distribution system with a minimum pressure of 35 psi throughout the distribution system, in accordance with 30 TEX. ADMIN. CODE § 290.46(r); and
 - vi. Enclose all facilities with intruder resistant fences, in accordance with 30 TEX. ADMIN. CODE §§ 290.41(c)(3)(O) and 290.43(e).
- j. Within 195 days after the effective date of this Order, submit certification of compliance with Ordering Provisions 2.i.i.-2.i.vi.; and
- k. Mr. Horvath shall submit all correspondence, reports, and documentation required by these Ordering Provisions to:

Work Leader
Team 5, Section III
Enforcement Division, MC 149
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

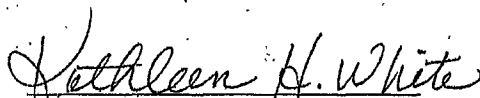
- 3. All relief not expressly granted in this Order is denied.

4. The provisions of this Order shall apply to and be binding upon Mr. Horvath. Mr. Horvath 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 Mr. Horvath shall be made in writing to the Executive Director. Extensions are not effective until Mr. Horvath receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Horvath if the Executive Director determines that Mr. Horvath has not complied with one or more of the terms or conditions 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. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Shawn Horvath dba Aero Valley Water Service
TCEQ Docket No. 2002-0867-PWS-E
Page 14

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY


For the Commission

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 12, 2005

Mailed Via Certified Mail and
Via First Class Mail

Shawn Horvath
Aero Valley Water Service
950 Airport Road
Roanoke, Texas 76262-5726

RE: Shawn Horvath dba Aero Valley Water Service
TCEQ Docket No. 2002-0867-PWS-E; TCEQ ID Nos. 0610243 and 11401
Default Order Assessing Administrative Penalties and Requiring Certain Action

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Enforcement Coordinator or the Staff Attorney. If there are questions pertaining to the mailing of the order, then please contact Cynthia Zapata of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-4517.

Sincerely,

A handwritten signature in dark ink, appearing to read "LaDonna Castañuela".

LaDonna Castañuela
Chief Clerk

LDC/cz

Enclosure

cc: Jennifer Cook, Staff Attorney, TCEQ Litigation Division (MC 175)
Jorge Ibarra, Enforcement Coordinator, TCEQ Region 4
Sidney Slocum, Regional Contact, TCEQ Region 4

PWS/0610243/CO

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SHAWN HORVATH DBA AERO
VALLEY WATER SERVICE;
RN101198331

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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2008-0962-PWS-E

At its JUL 08 2009 agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Second Amended Report and Petition filed pursuant to TEX. WATER CODE chs. 5 and 7, TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Shawn Horvath dba Aero Valley Water Service ("Mr. Horvath").

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

FINDINGS OF FACT

1. Mr. Horvath owns and operates a public water supply located at east of Interstate 35 West, one-half mile south of Farm-to-Market Road 1171 on Cleveland Gibbs Road at Northwest Regional Airport in Denton County, Texas (the "Facility").
2. The Facility has twenty 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 supply system as defined in 30 TEX. ADMIN. CODE § 290.38(63).
3. During record reviews conducted on February 18, 2008, June 11, 2008 and July 31, 2008, TCEQ staff documented that Mr. Horvath:
 - a. Failed to collect routine distribution water samples for coliform analysis for the months of July 2007 through December 2007 and failed to provide public notification of the failure to sample for the months July 2007 through December 2007;
 - b. Failed to collect a set of repeat samples within 24 hours of being notified of a total coliform-positive sample result and failed to provide public notification of the failure to collect repeat water samples for the month of March 2008;

- c. Failed to mail or directly deliver one copy of the Consumer Confidence Report ("CCR") to each bill paying customer by July 1 of each year and failed to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the water system and that the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ by July 1 of each year—specifically, Mr. Horvath did not mail or directly deliver the CCRs to the water system's customers for the years 2000 through 2006 nor did Mr. Horvath submit the CCR or the required certification to the TCEQ for the years 2000 through 2006; and
 - d. Failed to pay all annual and late Public Health Service fees for TCEQ Financial Administration Account No. 90610243 for Fiscal Years 2003 through 2008 to the TCEQ in a timely manner.
- 4. Mr. Horvath received notice of the violations on or about April 5, 2008 and July 30, 2008.
 - 5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Shawn Horvath dba Aero Valley Water Service" (the "EDPRP") in the TCEQ Chief Clerk's office on December 2, 2008.
 - 6. By letter dated December 2, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Horvath with notice of the EDPRP. According to the return receipt "green card," Mr. Horvath received notice of the EDPRP on December 15, 2008, as evidenced by the signature on the card.
 - 7. More than 20 days have elapsed since Mr. Horvath received notice of the EDPRP, provided by the Executive Director. Mr. Horvath failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
 - 8. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Shawn Horvath dba Aero Valley Water Service" (the "EDFARP") in the TCEQ Chief Clerk's office on March 12, 2009.
 - 9. By letter dated March 12, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Horvath with notice of the EDFARP. According to the return receipt "green card," Mr. Horvath received notice of the EDFARP on March 23, 2009, as evidenced by the signature on the card.

10. More than 20 days have elapsed since Mr. Horvath received notice of the EDFARP, provided by the Executive Director. Mr. Horvath failed to file an answer to the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.
11. The Executive Director filed the "Executive Director's Second Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Shawn Horvath dba Aero Valley Water Service" (the "EDSARP") in the TCEQ Chief Clerk's office on April 2, 2008.
12. By letter dated April 2, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Horvath with notice of the EDSARP. According to the return receipt "green card," Mr. Horvath received notice of the EDSARP on April 17, 2008, as evidenced by the signature on the card.
13. More than 20 days have elapsed since Mr. Horvath received notice of the EDSARP, provided by the Executive Director. Mr. Horvath failed to file an answer to the EDSARP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Horvath is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5 and 7, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Horvath failed to collect routine distribution water samples for coliform analysis for the months of July 2007 through December 2007 and failed to provide public notification of the failure to sample for the months of July 2007 through December 2007, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(ii) and 290.122(c)(2)(A) and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. As evidenced by Finding of Fact No. 3.b., Mr. Horvath failed to collect a set of repeat samples within twenty-four hours of being notified of a total coliform-positive sample result and failed to provide public notification of the failure to collect repeat water samples for the month of March 2008, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(ii) and 290.122(c)(2)(A).
4. As evidenced by Finding of Fact No. 3.c., Mr. Horvath failed to mail or deliver one copy of the CCR to each bill paying customer by July 1 of each year and failed to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the water system and that the information in the CCR is correct and consistent with compliance

monitoring data to the TCEQ by July 1 of each year, in violation of 30 TEX. ADMIN. CODE §§ 290.271(b), 290.274(a) and 290.274(c).

5. As evidenced by Finding of Fact No. 3.d., Mr. Horvath failed to pay all annual and late Public Health Service Fees for TCEQ Financial Administration Account No. 90610243 for Fiscal Years 2003 through 2008 to the TCEQ in a timely manner, in violation of 30 TEX. ADMIN. CODE § 290.51(a)(6) and TEX. WATER CODE § 5.702.
6. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Horvath with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).
7. As evidenced by Finding of Fact No. 7, Mr. Horvath failed to file a timely answer the EDPRP as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Horvath and assess the penalty recommended by the Executive Director.
8. As evidenced by Finding of Fact Nos. 8 and 9, the Executive Director timely served Mr. Horvath with proper notice of the EDFARP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).
9. As evidenced by Finding of Fact No. 10, Mr. Horvath failed to file a timely answer the EDFARP as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Horvath and assess the penalty recommended by the Executive Director.
10. As evidenced by Finding of Fact Nos. 11 and 12, the Executive Director timely served Mr. Horvath with proper notice of the EDSARP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).
11. As evidenced by Finding of Fact No. 13, Mr. Horvath failed to file a timely answer the EDSARP as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Horvath and assess the penalty recommended by the Executive Director.
12. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Mr. Horvath for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of

rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

13. An administrative penalty in the amount of five thousand one hundred thirty-three dollars (\$5,133.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049.
14. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Mr. Horvath is assessed an administrative penalty in the amount of five thousand one hundred thirty-three dollars (\$5,133.00) for violations of the Texas Water Code, the Texas Health & Safety Code, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Horvath's compliance with all the terms and conditions set forth in this Order completely resolve 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 other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Shawn Horvath dba Aero Valley Water Service; Docket No. 2008-0962-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. Mr. Horvath shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Commission Order, Mr. Horvath shall:
 - i. Begin collecting routine distribution coliform samples which are representative of the Facility's water system, as required by 30 TEX. ADMIN. CODE § 290.109;

- ii. Begin collecting repeat samples within 24 hours of being notified of a total coliform-positive sample result, as required by 30 TEX. ADMIN. CODE § 290.109; and
 - iii. Begin posting public notice as required by 30 TEX. ADMIN. CODE § 290.122.
- b. Within 30 days after the effective date of this Commission Order:
- i. Mail or directly deliver one copy of the CCR prepared using the compliance monitoring data for the year 2007 to each bill paying customer, and make a good-faith effort to deliver to non-bill paying customers, as required by 30 TEX. ADMIN. CODE § 290.271 and 290.274; and
 - ii. Pay all outstanding fees, including any associated penalties and interest for Financial Administration Account No. 90610243, as required by 30 TEX. ADMIN. CODE § 290.51 and TEX. WATER CODE § 5.702. The payment shall include the notation "Shawn Horvath dba Aero Valley Water Service, Account No. 90610243" and shall be mailed 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
- c. Within 45 days after the effective date of this Commission Order, Mr. Horvath shall submit to the Commission a copy of the CCR provided to customers of the water system and the certification that the CCR has been distributed to the customers of the water system and that the information in the CCR is correct and consistent with the compliance monitoring data, as required by 30 TEX. ADMIN. CODE § 290.274. The copy of the CCR and certification shall be mailed to:

Public Drinking Water Section
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
- d. Within 45 days after the effective date of this Commission Order, Mr. Horvath shall certify compliance with Ordering Provision Nos. 2.a., 2.b., and 2.c.

- e. Within 180 days after the effective date of this Commission Order, comply with the coliform monitoring requirements and provide water that meets the provisions regarding microbial contaminants, as required by 30 TEX. ADMIN. CODE § 290.109.
- f. Within 210 days after the effective date of this Commission Order, Mr. Horvath shall certify compliance with Ordering Provision No. 2.e.
- g. Mr. Horvath shall submit written certification as described below, and shall include detailed supporting documentation including photographs, receipts, and/or other records necessary to demonstrate compliance with these Ordering Provisions. 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 fine and imprisonment for knowing violations."

The certification and supporting documents 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:

Sid Slocum, Water Section Manager
Texas Commission on Environmental Quality
Dallas / Fort Worth Regional Office
2309 Gravel Dr.
Fort Worth, Texas 76118-6951

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

4. The provisions of this Order shall apply to and be binding upon Mr. Horvath. Mr. Horvath 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 Mr. Horvath shall be made in writing to the Executive Director. Extensions are not effective until Mr. Horvath receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Horvath if the Executive Director determines that Mr. Horvath has not complied with one or more of the terms or conditions 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. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Shawn Horvath dba Aero Valley Water Service
Docket No. 2008-0962-PWS-E
Page 9

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Buddy Conix
For the Commission

Buddy Garcia, *Chairman*
Larry R. Soward, *Commissioner*
Bryan W. Shaw, Ph.D., *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 17, 2009

MAILED VIA CERTIFIED MAIL
AND VIA FIRST CLASS MAIL

71 7108 2133 3935 2031 2450

Shawn Horvath, Owner
Aero Valley Water Service
5281 Kelly Drive
Roanoke, Texas 76262-3612

RE: Shawn Horvath dba Aero Valley Water Service
TCEQ Docket No. 2008-0962-PWS-B; Registration No. 0610243
Default Order Assessing Administrative Penalties and Requiring Certain Actions

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Enforcement Coordinator or the Staff Attorney. If there are questions pertaining to the mailing of the order, then please contact Leslie Gann of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3319.

Sincerely,

A handwritten signature in cursive script, appearing to read "LaDonna Castañuela".

LaDonna Castañuela
Chief Clerk

LDC/lg

Enclosure

cc: Sid Slocum, Regional Contact, TCEQ DFW Regional Office (MC R-4)
Stephen Thompson, Enforcement Coordinator, TCEQ Enforcement Division (MC 169)
Tommy Tucker Henson, II, Staff Attorney, TCEQ Litigation Division (MC 175)

PWS/0610243/CO

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SHAWN HORVATH D/B/A AERO
VALLEY WATER SERVICE;
RN101198331

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER

DOCKET NO. 2010-0619-PWS-E

At its MAY 11 2011 agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. HEALTH & SAFETY CODE ch. 341, TEX. WATER CODE ch. 5, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Shawn Horvath d/b/a Aero Valley Water Service ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a public water system located east of Interstate 35 West on Farm-to-Market Road 1171, one-half mile south on Cleveland Gibbs Road at Northwest Regional Airport, Denton County, Texas (the "Facility").
2. The Facility has 38 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(66).
3. During an investigation conducted on March 9, 2010, a TCEQ Dallas/Fort Worth Regional Investigator documented that Respondent:
 - a. Failed to provide a total storage capacity of at least 200 gallons per connection. Specifically, the Facility serves 38 connections and is required to provide a total storage capacity of at least 7,600 gallons. The Facility currently provides a ground storage capacity of 1,200 gallons which is an 84% deficiency;
 - b. Failed to provide a pressure tank capacity of at least 20 gallons per connection. Specifically, the Facility serves 38 connections and is required to provide a pressure tank capacity of at least 760 gallons. The Facility currently provides a pressure tank capacity of 120 gallons which is an 84% deficiency;
 - c. Failed to provide an intruder-resistant fence to protect the Facility's ground storage and pressure tanks;
 - d. Failed to maintain a residual disinfectant concentration of at least 0.2 milligrams per liter ("mg/L") free chlorine throughout the distribution system at all times. Specifically, the residual disinfectant concentration was measured to be 0.01 mg/L free chlorine;

- e. Failed to ensure that the Facility is at all times operated under the direct supervision of a water works operator that holds a valid class "D" or higher license;
 - f. Failed to keep on file and make available for review an up-to-date record of water works operations and maintenance activities for operator review and reference. Specifically, the Facility's monthly operating reports were not available for review;
 - g. Failed to provide a flow measuring device for the Facility's well. Specifically, the well meter was not properly functioning;
 - h. Failed to compile and maintain a thorough plant operations manual for operator review and reference;
 - i. Failed to provide accurate metering devices at each residential, commercial or industrial service connection;
 - j. Failed to maintain copies of the well completion data such as well material setting data, geological data, sealing information, disinfection information, microbiological sampling results, and a chemical analysis report of a representative sample of water from the well on file at the Facility and to make the data available to the Executive Director upon request;
 - k. Failed to post a legible sign at the water treatment facility that provides the name of the water supply and an emergency telephone number where a responsible official can be contacted; and
 - l. Failed to pay all annual and late Public Health Service fees for TCEQ Financial Administration Account No. 90610243 for Fiscal Years 2003 through 2010.
- 4. Respondent received notice of the violations on or about April 14, 2010.
 - 5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Shawn Horvath d/b/a Aero Valley Water Service" (the "EDPRP") in the TCEQ Chief Clerk's office on June 9, 2010.
 - 6. By letter dated June 9, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on June 11, 2010, as evidenced by the signature on the card.
 - 7. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Shawn Horvath d/b/a Aero Valley Water Service" (the "EDFARP") in the TCEQ Chief Clerk's office on October 12, 2010.

8. By letter dated October 12, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDFARP. According to the return receipt "green card," Respondent received notice of the EDFARP on October 29, 2010, as evidenced by the signature on the card.
9. More than 20 days have elapsed since Respondent received notice of the EDPRP and the EDFARP, provided by the Executive Director. Respondent failed to file an answer to the EDPRP and the EDFARP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Respondent failed to provide a total storage capacity of at least 200 gallons per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(B)(ii) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
3. As evidenced by Finding of Fact No. 3.b., Respondent failed to provide a pressure tank capacity of at least 20 gallons per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(B)(iv) and TEX. HEALTH & SAFETY CODE § 341.0315(c).
4. As evidenced by Finding of Fact No. 3.c., Respondent failed to provide an intruder-resistant fence to protect the Facility's ground storage and pressure tanks, in violation of 30 TEX. ADMIN. CODE § 290.43(e).
5. As evidenced by Finding of Fact No. 3.d., Respondent failed to maintain a residual disinfectant concentration of at least 0.2 milligrams per liter ("mg/L") free chlorine throughout the distribution system at all times, in violation of 30 TEX. ADMIN. CODE § 290.46(d)(2)(A).
6. As evidenced by Finding of Fact No. 3.e., Respondent failed to ensure that the Facility is at all times operated under the direct supervision of a water works operator that holds a valid class "D" or higher license, in violation of 30 TEX. ADMIN. CODE § 290.46(e)(4)(A) and TEX. HEALTH & SAFETY CODE § 341.034(b).
7. As evidenced by Finding of Fact No. 3.f., Respondent failed to keep on file and make available for review an up-to-date record of water works operations and maintenance activities for operator review and reference, in violation of 30 TEX. ADMIN. CODE § 290.46(f)(2) and (f)(3)(E)(i).
8. As evidenced by Finding of Fact No. 3.g., Respondent failed to provide a flow measuring device for the Facility's well, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(N).
9. As evidenced by Finding of Fact No. 3.h., Respondent failed to compile and maintain a thorough plant operations manual for operator review and reference, in violation of 30 TEX. ADMIN. CODE § 290.42(i).

10. As evidenced by Finding of Fact No. 3.i., Respondent failed to provide accurate metering devices at each residential, commercial or industrial service connection, in violation of 30 TEX. ADMIN. CODE § 290.44(d)(4).
11. As evidenced by Finding of Fact No. 3.j., Respondent failed to maintain copies of the well completion data such as well material setting data, geological data, sealing information, disinfection information, microbiological sampling results, and a chemical analysis report of a representative sample of water from the well on file at the facility and to make the data available to the Executive Director upon request, in violation of 30 TEX. ADMIN. CODE § 290.46(n)(3).
12. As evidenced by Finding of Fact No. 3.k., Respondent failed to post a legible sign at the water treatment facility that provides the name of the water supply and an emergency telephone number where a responsible official can be contacted, in violation of 30 TEX. ADMIN. CODE § 290.46(t).
13. As evidenced by Findings of Fact No. 3.l., Respondent failed to pay all annual and late Public Health Service fees for TCEQ Financial Administration Account No. 90610243 for Fiscal Years 2003 through 2010 to the TCEQ in a timely manner, in violation of 30 TEX. ADMIN. CODE § 290.51(a)(6) and TEX. WATER CODE § 5.702.
14. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).
15. As evidenced by Findings of Fact Nos. 7 and 8, the Executive Director timely served Respondent with proper notice of the EDFARP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).
16. As evidenced by Finding of Fact No. 9, Respondent failed to file a timely answer as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
17. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Respondent for violations of the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
18. An administrative penalty in the amount of four thousand six hundred seventy-six dollars (\$4,676.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049.
19. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of four thousand six hundred seventy-six dollars (\$4,676.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve 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 other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Shawn Horvath d/b/a Aero Valley Water Service; Docket No. 2010-0619-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. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Respondent shall:
 - I. Begin operating the Facility with a water works operator that holds a valid class "D" or higher license, in accordance with 30 TEX. ADMIN. CODE § 290.46 (Conclusion of Law No. 6); and
 - II. Begin operating the disinfection equipment to maintain a disinfectant residual concentration of at least 0.2 milligrams per liter ("mg/L") free chlorine throughout the distribution system at all times, in accordance with 30 TEX. ADMIN. CODE § 290.110 (Conclusion of Law No. 5).
 - b. Within 15 days after the effective date of this Order, Respondent shall submit written certification, as described in Ordering Provision No. 2.j. below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.
 - c. Within 30 days after the effective date of this Order, Respondent shall:
 - I. Begin maintaining on file copies of the Facility's operating records, including but not limited to, the Facility's monthly operating reports, in accordance with 30 TEX. ADMIN. CODE § 290.46 (Conclusion of Law No. 7);
 - II. Post a legible sign at the Facility that provides the name of the water supply and an emergency telephone number where a responsible official can be contacted, in accordance with 30 TEX. ADMIN. CODE § 290.46 (Conclusion of Law No. 12); and

- III. Pay all outstanding fees, including any associated penalties and interest for Financial Administration Account No. 90610243, as required by 30 TEX. ADMIN. CODE § 290.51 (Conclusion of Law No. 13). The payment shall include the notation "Shawn Horvath d/b/a Aero Valley Water Service Account No. 90610243" and shall be mailed 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

- d. Within 45 days after the effective date of this Order, Respondent shall submit written certification, as described in Ordering Provision No. 2.j. below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.c.
- e. Within 60 days after the effective date of this Order, Respondent shall:
 - I. Compile and keep on file for operator review and reference a thorough plant operations manual, in accordance with 30 TEX. ADMIN. CODE § 290.42 (Conclusion of Law No. 9); and
 - II. Maintain at the Facility a copy of the well completion data such as well material setting data, geological data, sealing information, disinfection information, microbiological sampling results, and a chemical analysis report of a representative sample of water from the well, in accordance with 30 TEX. ADMIN. CODE § 290.46 (Conclusion of Law No. 11).
- f. Within 75 days after the effective date of this Order, Respondent shall submit written certification, as described in Ordering Provision No. 2.j. below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.e.
- g. Within 90 days after the effective date of this Order, Respondent shall:
 - I. Provide an intruder-resistant fence to protect the Facility's ground storage and pressure tanks, in accordance with 30 TEX. ADMIN. CODE § 290.43 (Conclusion of Law No. 4);
 - II. Provide the Facility's well with a functional flow measuring device, in accordance with 30 TEX. ADMIN. CODE § 290.41 (Conclusion of Law No. 8); and
 - III. Provide metering devices at all service connections on the distribution system, in accordance with 30 TEX. ADMIN. CODE § 290.44 (Conclusion of Law No. 10).

- h. Within 105 days after the effective date of this Order, Respondent shall submit written certification, as described in Ordering Provision No. 2.j. below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.g.
- i. Within 180 days after the effective date of this Order, Respondent shall:
 - I. Provide a total ground storage capacity of at least 200 gallons per connection, in accordance with 30 TEX. ADMIN. CODE § 290.45 (Conclusion of Law No. 2); and
 - II. Provide a total pressure tank capacity of at least 20 gallons per connection, in accordance with 30 TEX. ADMIN. CODE § 290.45 (Conclusion of Law No. 3).
- j. Within 195 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 2.i. 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 fine and imprisonment for knowing violations."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

with a copy to:

Water Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Drive
Fort Worth, TX 76118-6951

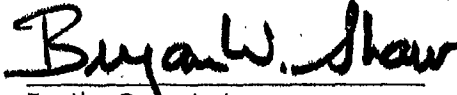
- 3. All relief not expressly granted in this Order is denied.

4. The provisions of this Order shall apply to and be binding upon Respondent. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions 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. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Shawn Horvath d/b/a Aero Valley Water Service
Docket No. 2010-0619-PWS-E
Page 9

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



For the Commission

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

May 19, 2011

MAILED VIA CERTIFIED MAIL
AND VIA FIRST CLASS MAIL

Shawn Horvath, Owner
Aero Valley Water Service
5281 Kelly Drive
Roanoke, Texas 76262-3612

RE: Shawn Horvath dba Aero Valley Water Service
TCEQ Docket No. 2010-0619-PWS-E; Registration No. 0610243
Default Order Assessing Administrative Penalties and Requiring Certain Action

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Enforcement Coordinator or the Staff Attorney. If there are questions pertaining to the mailing of the order, then please contact Leslie Gann of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3319.

Sincerely,

A handwritten signature in cursive script that reads "Melissa Chao".

Melissa Chao
Acting Chief Clerk

MC/lg

Enclosure

cc: Sid Slocum, Regional Contact, TCEQ Regional Office (MC R-4)
Stephen Thompson, Enforcement Coordinator, TCEQ Enforcement Division
(MC 169)
Xavier Guerra, Staff Attorney, TCEQ Litigation Division (MC R-13)

PWS/0610243/CO

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SHAWN M. HORVATH D/B/A
AERO VALLEY WATER
SERVICE;
RN101198331

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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

DEFAULT ORDER

DOCKET NO. 2011-0489-PWS-E

At its MAY 16 2012 agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE ch. 5, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Shawn M. Horvath d/b/a Aero Valley Water Service ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a public water system located east of Interstate 35 West on Farm-to-Market Road 1171, one-half mile south on Cleveland Gibbs Road at Northwest Regional Airport in Denton County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 38 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(66).
2. During a record review conducted on February 3, 2011, a TCEQ Central Office Investigator documented that Respondent:
 - a. Failed to collect routine distribution water samples for coliform analysis for the months of September 2009 through January 2010; and
 - b. Failed to provide a public notification of the failure to sample for the months of September 2009 through January 2010.
3. During a record review conducted on March 29, 2011, a TCEQ Central Office Enforcement Coordinator documented that Respondent failed to pay all annual and late Public Health Service fees for TCEQ Financial Administration Account No. 90610243 for Fiscal Year 2011.

4. During a record review conducted on May 27, 2011, a TCEQ Central Office Investigator documented that Respondent:
 - a. Failed to submit a Disinfectant Level Quarterly Operating Report ("DLQOR") to the Executive Director each quarter by the tenth day of the month following the end of each quarter. Specifically, Respondent did not submit DLQORs for the first quarter of 2006 through the fourth quarter of 2010;
 - b. Failed to mail or directly deliver one copy of the Consumer Confidence Report ("CCR") to each bill paying customer by July 1 of each year. Specifically, Respondent did not mail or directly deliver the CCRs to the Facility's customers for the years 2007 through 2009; and
 - c. Failed to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the Facility and that the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ by July 1 of each year. Specifically, Respondent did not submit the CCR or the required certification to the TCEQ for the years 2007 through 2009.
5. During an investigation conducted on September 15, 2011, a TCEQ Dallas/Fort Worth Regional Office Investigator documented that Respondent:
 - a. Failed to locate the top of the waterline below the frost line and at least 24 inches below the ground surface. Specifically, the waterline lies on top of the ground for several hundred yards;
 - b. Failed to install waterlines in a separate watertight pipe encasement and provide valves on each side of the crossing when waterlines are laid under any flowing or intermittent stream. Specifically, a two-inch, polyvinyl chloride waterline without encasement crossed an intermittent creek at several locations and was located in the creek bed for several yards; and
 - c. Failed to operate the disinfection equipment to continuously maintain a disinfectant residual of 0.2 milligrams per liter ("mg/L") of free chlorine throughout the distribution system at all times. Specifically, the disinfectant residual was measured to be 0.06 mg/L free chlorine within the distribution system.
6. Respondent received notice of the violations alleged in Finding of Fact No. 2 on or about February 27, 2011. Respondent received notice of the violations alleged in Finding of Fact No. 4 on or about June 1, 2011. Respondent received notice of the violations alleged in Finding of Fact No. 5 on or about September 21, 2011.
7. The Executive Director recognizes that as of July 30, 2010, Respondent:
 - a. Began collecting routine distribution water samples for coliform analysis (Conclusion of Law No. 2.); and
 - b. Implemented procedures to ensure all necessary public notifications are provided in a timely manner to the customers of the Facility (Conclusion of Law No. 3.).

8. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Shawn M. Horvath d/b/a Aero Valley Water Service" (the "EDPRP") in the TCEQ Chief Clerk's office on July 27, 2011.
9. By letter dated July 27, 2011, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
10. The Executive Director filed the "Executive Director's First Amended Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Shawn M. Horvath d/b/a Aero Valley Water Service" (the "EDFARP") in the TCEQ Chief Clerk's office on January 26, 2012.
11. By letter dated January 26, 2012, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDFARP. According to the return receipt "green card," Respondent received notice of the EDFARP on January 31, 2012, as evidenced by the signature on the card.
12. More than 20 days have elapsed since Respondent received notice of the EDPRP and the EDFARP. Respondent failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 5, TEX. HEALTH & SAFETY CODE ch. 341, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to collect routine distribution water samples for coliform analysis for the months of September 2009 through January 2010, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(2)(A)(ii), TEX. HEALTH & SAFETY CODE § 341.033(d), and TCEQ Default Order Docket No. 2008-0962-PWS-E, Ordering Provision No. 2.a.i.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to provide a public notification of the failure to sample for the months of September 2009 through January 2010, in violation of 30 TEX. ADMIN. CODE § 290.122(c)(2)(A).
4. As evidenced by Finding of Fact No. 3., Respondent failed to pay all annual and late Public Health Service fees for TCEQ Financial Administration Account No. 90610243 for Fiscal Year 2011, in violation of 30 TEX. ADMIN. CODE § 290.51(a)(6) and TEX. WATER CODE § 5.702.

5. As evidenced by Finding of Fact No. 4.a., Respondent failed to submit a DLQOR to the Executive Director each quarter 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).
6. As evidenced by Finding of Fact No. 4.b., Respondent failed to mail or directly deliver one copy of the CCR to each bill paying customer by July 1 of each year, in violation of 30 TEX. ADMIN. CODE §§ 290.271(b) and 290.274(a) and TCEQ Default Order Docket No. 2008-0962-PWS-E, Ordering Provision No. 2.b.i.
7. As evidenced by Finding of Fact No. 4.c., Respondent failed to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the Facility and that the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ by July 1 of each year, in violation of 30 TEX. ADMIN. CODE § 290.274(c) and TCEQ Default Order Docket No. 2008-0962-PWS-E, Ordering Provision No. 2.c.
8. As evidenced by Finding of Fact No. 5.a., Respondent failed to locate the top of the waterline below the frost line and at least 24 inches below the ground surface, in violation of 30 TEX. ADMIN. CODE § 290.44(a)(4).
9. As evidenced by Finding of Fact No. 5.b., Respondent failed to install waterlines in a separate watertight pipe encasement and provide valves on each side of the crossing when waterlines are laid under any flowing or intermittent stream, in violation of 30 TEX. ADMIN. CODE § 290.44(f)(2).
10. As evidenced by Finding of Fact No. 5.c., Respondent failed to operate the disinfection equipment to continuously maintain a disinfectant residual of 0.2 mg/L of free chlorine throughout the distribution system at all times, in violation of 30 TEX. ADMIN. CODE § 290.46(d)(2)(A) and 290.110(b)(4) and TCEQ Default Order Docket No. 2010-0619-PWS-E, Ordering Provision No. 2.a.ii.
11. As evidenced by Findings of Fact Nos. 8 and 9, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
12. As evidenced by Findings of Fact Nos. 10 and 11, the Executive Director timely served Respondent with proper notice of the EDFARP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).
13. As evidenced by Finding of Fact No. 12, Respondent failed to file a timely answer as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
14. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

15. An administrative penalty in the amount of ten thousand nine hundred ninety-one dollars (\$10,991.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049.
16. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of ten thousand nine hundred ninety-one dollars (\$10,991.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve 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 other violations which are not raised here.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Shawn M. Horvath d/b/a Aero Valley Water Service; Docket No. 2011-0489-PWS-E" to:

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

3. Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Respondent shall begin operating the disinfection equipment to continuously maintain a disinfectant residual of 0.2 milligrams per liter of free chlorine throughout the distribution system at all times, in accordance with 30 TEX. ADMIN. CODE §§ 290.46 and 290.110 (Conclusion of Law No. 10).
 - b. Within 30 days after the effective date of this Order, Respondent shall:
 - I. Update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified monthly DLQORs, in accordance with 30 TEX. ADMIN. CODE § 290.110 (Conclusion of Law No. 5);
 - II. Mail or directly deliver one copy of the CCR prepared using the compliance monitoring data to each bill paying customer and make a good faith effort to deliver the CCR to non-bill paying customers, in accordance with 30 TEX. ADMIN. CODE § 290.274 (Conclusion of Law No. 6);

- iii. Submit payment for all outstanding fees, interest, and penalties for TCEQ Financial Administration ("FA") Account No. 90610243 (Conclusion of Law No. 4). The payment shall be sent with the notation "Shawn M. Horvath d/b/a Aero Valley Water Service, FA Account No. 90610243" 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

- iv. Submit written certification and detailed supporting documentation in accordance with Ordering Provision No. 3.g. below, to demonstrate compliance with Ordering Provision No. 3.a.

- c. Within 45 days after the effective date of this Order, Respondent shall:

- i. Submit written certification and detailed supporting documentation in accordance with Ordering Provision No. 3.g. below, to demonstrate compliance with Ordering Provisions Nos. 3.b.i. and 3.b.iii.;
- ii. Submit to the Commission a copy of the CCR provided to customers of the Facility and the certification that the CCR has been distributed to the customers of the Facility and that the information in the CCR is correct and consistent with the compliance monitoring data, in accordance with 30 TEX. ADMIN. CODE § 290.274 (Conclusion of Law No. 7). The copy of the CCR and certification shall be mailed to:

Public Drinking Water Section
Water Supply Division, MC155
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

- d. Within 60 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation in accordance with Ordering Provision No. 3.g. below, to demonstrate compliance with Ordering Provision No. 3.c.ii.;

- e. Within 90 days after the effective date of this Order, Respondent shall:

- i. Begin submitting DLQORs to the Executive Director by the tenth day of the month following each quarter, in accordance with 30 TEX. ADMIN. CODE § 290.110 (Conclusion of Law No. 5). DLQORs shall be submitted to the following address:

Public Drinking Water Section
Attention: DLQOR Coordinator, MC 155
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

- ii. Ensure that all waterlines are located below the frost line and at least 24 inches below the ground surface, in accordance with 30 TEX. ADMIN. CODE § 290.44 (Conclusion of Law No. 8); and
- iii. Ensure that all waterlines that are laid under any flowing or intermittent stream are encased in a separate, watertight pipe and valves are provided on each side of the stream crossing, in accordance with 30 TEX. ADMIN. CODE § 290.44 (Conclusion of Law No. 9).
- f. Within 105 days after the effective date of this Order, Respondent shall submit written certification in accordance with Ordering Provision No. 3.g., below, to demonstrate compliance with Ordering Provision Nos. 3.e.i. through 3.e.iii.
- g. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

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

Respondent shall submit the written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

with a copy to:

Public Drinking Water Section Manager
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and:

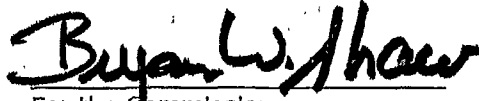
Sid Slocum, Water Section Manager
Texas Commission on Environmental Quality
Dallas/Fort Worth Regional Office
2309 Gravel Drive
Forth Worth, Texas 76118-6951

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. 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.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
8. 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.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Shawn M. Horvath d/b/a Aero Valley Water Service
Docket No. 2011-0489-PWS-E
Page 9

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY


For the Commission

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

May 22, 2012

MAILED VIA CERTIFIED MAIL
AND VIA FIRST CLASS MAIL

Shawn M. Horvath
Aero Valley Water Service
P.O. Box 1398
Roanoke, Texas 76262-1398

RE: Shawn M. Horvath dba Aero Valley Water Service
TCEQ Docket No. 2011-0489-PWS-E; Registration No. 0610243
— Default Order Assessing Administrative Penalties and Requiring Certain Action

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Enforcement Coordinator or the Staff Attorney. If there are questions pertaining to the mailing of the order, then please contact Leslie Gann of the Texas Commission on Environmental Quality's Office of the Chief Clerk (MC 105) at (512) 239-3319.

Sincerely,

Bridget C. Bohac

Bridget C. Bohac
Chief Clerk

BCB/lg

Enclosure

cc: Sid Slocum, Regional Contact, TCEQ Regional Office
Stephen Thompson, Enforcement Coordinator, TCEQ Enforcement Division
Xavier Guerra, Staff Attorney, TCEQ Litigation Division

Filed In The District Court
of Travis County, Texas

JUL 02 2014

At 9am M.
Amalia Rodriguez-Mendoza, Clerk

Cause No. D-1-GV-14-000058

STATE OF TEXAS,

Plaintiff,

v.

SHAWN M. HORVATH,

Defendant.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261st JUDICIAL DISTRICT

FINAL DEFAULT JUDGMENT AND PERMANENT INJUNCTION

On this day, Plaintiff, the State of Texas ("State"), on behalf of the Texas Commission on Environmental Quality ("TCEQ"), moved for default judgment after the Defendant, Shawn M. Horvath, failed to file an answer and appear in this case. At the hearing, the State appeared through its attorney, Matthew B. Miller. The Defendant did not appear. The Court determined it has jurisdiction over the subject matter and the parties in this proceeding. After considering the pleadings, the papers on file in this case, and the evidence the State presented on attorney's fees, the Court grants the State's motion for default judgment.

THE COURT FINDS THE FOLLOWING:

1. The State filed its Original Petition and Application for Temporary and Permanent Injunctions on March 25, 2014.
2. The Defendant was served with a copy of the State's petition and citation on April 29, 2014.
3. The Defendant failed to answer in this cause and, therefore, has admitted all facts alleged by the State's petition.

Penalties and Attorney's Fees

4. The State has stipulated to recover the minimum civil penalty allowed by the Texas Water Code of \$50.00 per day and has stipulated to ending the continuing violations



alleged in its original petition to the date the State filed its original petition, March 25, 2014.

Therefore, the amount of civil penalties to be assessed is liquidated without need for a hearing.

5. The State offered evidence by filing an affidavit proving its reasonable attorney's fees in the amount of \$10,000.00.

6. The administrative penalties sought in the State's original petition are proven by a written instrument attached to the petition, and are therefore liquidated without the necessity of a hearing for evidence.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

7. The State shall have judgment against Defendant for \$400,150.00 in civil penalties.

8. The State shall have judgment against Defendant for \$10,000.00 in attorney's fees.

9. The State shall have judgment against Defendant for \$15,667.00 in unpaid administrative penalties.

10. The State shall have judgment against Defendant for its costs of court.

11. The State shall recover post-judgment interest on all amounts awarded in this judgment at the annual rate of 5.00% per annum.

Permanent Injunction

THE COURT ORDERS FURTHER THAT:

12. Horvath, his agents, employees, and all persons in active concert or participation with him who receive actual notice of this injunction, be enjoined as follows:

13. As used in this Injunction, the following words and terms have the following meanings:



- A. "Horvath" means Defendant Shawn M. Horvath.
- B. "System" means the community ground water system known as Aero Valley Water Service located east of Interstate 35 West, one-half mile south of Farm-to-Market Road 1171 on Cleveland Gibbs Road at Northwest Regional Airport in Denton County, Texas.
- C. "TCEQ" means the Texas Commission on Environmental Quality.
- D. "Effective Date" means the date the Court signs this injunction.
- E. "DLQOR" means Disinfection Level Quarterly Operating Report.

14. Maintain and Test Chlorine Residual. Immediately upon the Effective Date of this Injunction, Horvath shall continuously provide and maintain a free chlorine disinfectant residual of at least 0.2 milligrams per liter throughout the System, in accordance with 30 Tex. Admin. Code § 290.110(b)(4); and he shall cause daily tests of the System's free chlorine residual to be performed. Horvath shall submit all free chlorine residual test results to TCEQ within fourteen (14) days of receipt for the first month after the Effective Date of this Injunction; and shall submit all free chlorine residual test results to TCEQ within thirty (30) days of receipt thereafter. This requirement will continue until every test over a six month period indicates a free chlorine residual of 0.2 mg/L or greater.

15. Remove all debris. Immediately upon the Effective Date of this Injunction, Horvath shall remove all trash, burned debris and detritus, and any gasoline cans from within 100 feet of the well. Furthermore, Horvath shall immediately remove the contents of the 55 gallon drum of sewage by contacting a reputable and licensed sewage removal service and shall submit to the TCEQ an invoice showing the name of the removal service, date of removal, and amount removed. Horvath shall be enjoined from storing sewage above ground in any manner at or near the System.



16. Hire a Class "D" water works operator. Immediately upon the Effective Date of this Injunction, Horvath shall begin operating The System under the direct supervision of a water works operator who holds a Class "D" or higher license. Within seven (7) days of the Effective Date of this Injunction, Horvath shall send documentation to TCEQ containing a copy of the operator's license and contact information.

17. Plant operations manual. Immediately upon the Effective Date of this Injunction, Horvath shall prepare and keep at the System a plant operations manual, in accordance with 30 Tex. Admin. Code § 290.42(1). The manual must, at the very minimum, provide the operator with routine maintenance and repair procedures; protocols to be utilized in the event of a natural or man-made catastrophe; and telephone numbers of water system personnel, system officials, and local/state/federal agencies to be contacted in the event of an emergency.

18. Employ minimum acceptable operating practices. Immediately upon the Effective Date of this Injunction, Horvath shall employ all minimum maintenance and housekeeping practices at the System, in accordance with 30 Tex. Admin. Code § 290.46(m). This includes maintaining the System in a manner so as to minimize the possibility of the harboring of rodents, insects, and other disease vectors, and in such a way as to prevent other conditions that might cause the contamination of the water.

19. Provide DLQORs. Immediately upon the Effective Date of this Injunction, Horvath shall begin submitting DLQORs to the TCEQ for each quarter of each year. The DLQOR for the first quarter is due within 10 days after the last day of March; the DLQOR for the second quarter is due within 10 days after the last day of June; the DLQOR for the third quarter is due within 10 days after the last day of September; and the DLQOR for the fourth quarter is due within 10 days after the last day of December. DLQORs shall be sent to:



DLQOR Coordinator
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

20. Perform routine coliform monitoring. Within 15 days after the Effective Date of this Injunction, Horvath shall cause monthly monitoring for fecal indicator organisms in the System to be performed, in compliance with 30 Tex. Admin. Code § 290.109(c)(2)(A)-(B). Horvath shall submit all monthly monitoring results to the TCEQ within 10 days of receipt.

21. Ensure all waterlines are below the frost line. Within 30 days after the Effective Date of this Injunction, Horvath shall ensure that all waterlines are located below the frost-line and at least 24 inches below the ground surface, in accordance with 30 Tex. Admin. Code § 290.44(a)(4).

22. Ensure all waterlines are properly encased. Within 30 days after the Effective Date of this Injunction, Horvath shall ensure that all waterlines that are laid under any flowing or intermittent stream are encased in a separate, watertight pipe and valves are provided on each side of the stream crossing, in accordance with 30 Tex. Admin. Code § 290.44(f)(2).

23. Update operational guidance. Within 60 days after the Effective Date of this Injunction, Horvath shall update the System's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified monthly DLQORs.

24. Provide Consumer Confidence Reports to customers. Within 60 days after the Effective Date of this Injunction, Horvath shall mail or directly deliver an annual Consumer Confidence Report (CCR) to each bill paying customer of the System and make a good faith



effort to deliver a copy of the CCR to each non-bill paying customer of the System, in accordance with 30 Tex. Admin. Code § 290.274.

25. Provide Consumer Confidence Reports to the TCEQ. Within 75 days after the Effective Date of this Injunction, Horvath shall submit a copy of the CCR which has been provided to customers to the TCEQ along with certification that the CCR has been distributed to the customers and that the information in the CCR is correct and consistent with the compliance monitoring data, in accordance with 30 Tex. Admin. Code § 290.274.

26. Public Notification. Within 90 days after the Effective Date of the Injunction, Horvath shall submit proof to the TCEQ that he has delivered Public Notice to customers served by the System, in accordance with 30 Tex. Admin. Code § 290.122, of his failure to comply with the reporting requirements for radionuclides, nitrates/nitrites, volatile organic contaminants, synthetic organic contaminants, metals and minerals, disinfectant residuals, and microbial contaminants from at least August 1, 2008, through December 31, 2012.

27. Submit unreported data. Within 60 days after the Effective Date of the Injunction, Horvath shall submit any unreported sample analysis data of the following, and timely submit all ongoing sampling of the following:

- A. volatile organic contaminants;
- B. metals and minerals;
- C. radionuclides;
- D. distribution disinfectant residuals;
- E. disinfectant byproducts;
- F. nitrates/nitrites;
- G. synthetic organic contaminants; and



H. lead and copper.

28. Maintain operating records onsite. Within 60 days after the Effective Date of the Injunction, Horvath shall make available for TCEQ review at the System a copy of the following documents:

- A. Well-completion data or an exception letter from the TCEQ;
- B. monitoring plan;
- C. distribution map;
- D. tank inspection reports;
- E. customer service agreements;
- F. sanitary control easement;
- G. drought contingency plan; and
- H. records of customer complaints.

29. Install fencing. Within 90 days after the Effective Date of the Injunction, Horvath shall ensure that the System is secured by an intruder-resistant fence, in accordance with 30 Tex.

Admin. Code § 290.43(e).

30. Install metering devices. Within 90 days after the Effective Date of the Injunction, Horvath shall ensure that the System has metering devices at each service connection, in accordance with 30 Tex. Admin. Code § 290.44(d)(4).

31. Install pressure tank. Within 90 days after the Effective Date of the Injunction, Horvath shall purchase and install a pressure tank with adequate capacity to provide pressure tank capacity of 20 gallons per connection, in accordance with 30 Tex. Admin. Code § 290.45(b)(1)(B)(iv).



32. Install ground storage tank. Within 90 days after the Effective Date of this Injunction, Horvath shall purchase and install a ground storage tank with adequate capacity to provide storage tank capacity of 200 gallons per connection, in accordance with 30 Tex. Admin. Code § 290.45(b)(1)(B)(ii).

33. Ensure electrical wiring complies with local and national code. Within 90 days after the Effective Date of this Injunction, Horvath shall ensure that the wiring at the System's well house is installed in conduit, in accordance with 30 Tex. Admin. Code § 290.46(v).

34. Submissions. Reports and notices to the TCEQ required under Paragraphs K – M above shall be made in accordance with 30 Tex. Admin. Code §§ 290.106, .107, .108, .109, .110, and .274 and addressed to:

Texas Commission on Environmental Quality
Public Drinking Water Section, MC 155
Attn: Sally Paramo
P.O. Box 13087
Austin, TX 78711-3087

With copies to:

Matthew B. Miller
Assistant Attorney General
Office of the Attorney General
Environmental Protection Division
P. O. Box 12548, MC-066
Austin, Texas 78711-2548

35. Certifications of compliance. Within 10 days after obtaining initial compliance with each provision of this Injunction, Horvath shall submit written certification of compliance, as well as supporting documentation including, but not limited to, photographs, receipts, and/or other records to demonstrate compliance, to:

Order Compliance Team
Enforcement Division, MC 219
Texas Commission on Environmental Quality



P.O. Box 13087
Austin, Texas 78711-3087

With copies to:

Matthew B. Miller
Assistant Attorney General
Office of the Attorney General
Environmental Protection Division
P. O. Box 12548, MC-066
Austin, Texas 78711-2548

THE COURT ORDERS FURTHER THAT:

36. The Clerk of this Court shall issue a writ of permanent injunction against the Defendant, his agents, servants, employees, and all other persons acting in active concert or participation with the Defendant, as set forth above.

37. The Court orders execution to issue for this judgment.

38. The State shall be allowed such writs and processes as may be necessary to enforce this judgment.

39. This judgment finally disposes of all parties and all claims, and is appealable.

Signed on July 2, 2014, 2014.


JUDGE PRESIDING



Approved as to form and entry requested by:

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JOHN B. SCOTT
Deputy Attorney General for Civil Litigation

JON NIERMANN
Chief, Environmental Protection Division

/s/ Matthew Miller
MATTHEW B. MILLER
Assistant Attorney General
State Bar No. 24074722
Office of the Attorney General
Environmental Protection Division
P.O. Box 12548, MC-066
Austin, Texas 78711-2548
Phone: (512) 475-4029
Fax: (512) 320-0911
Email: matt.miller@texasattorneygeneral.gov

ATTORNEYS FOR THE STATE OF TEXAS



PWS_0610243_CO_20150609_FINAL
ORDER

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
SHAWN M. HORVATH DBA
AERO VALLEY WATER SERVICE;
RN101198331

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BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

DEFAULT ORDER

DOCKET NO. 2014-1598-PWS-E

On JUN 03 2015, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is Shawn M. Horvath DBA Aero Valley Water Service ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns and operates a public water system located East of Interstate 35 West on Farm-to-Market Road 1171, one-half mile south on Cleveland Gibbs Road at Northwest Regional Airport in Roanoke, Denton County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 38 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(66).
2. During an investigation conducted on September 10, 2014, an investigator documented that Respondent failed to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines and related appurtenances in a watertight condition and free of excessive solids. Specifically, there was standing water in a ditch with cattails and aquatic vegetation growth in the area where there was a leaky distribution system line.
3. The Executive Director recognizes that Respondent repaired the leak in the distribution line by September 14, 2014.
4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against Shawn M. Horvath DBA Aero Valley Water Services" (the "EDPRP") in the TCEQ Chief Clerk's office on February 5, 2015.
5. By letter dated February 5, 2015, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on February 28, 2015, as evidenced by the signature on the card.
6. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, 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, Respondent failed to maintain all water treatment units, storage and pressure maintenance facilities, distribution system lines and related appurtenances in a watertight condition and free of excessive solids, in violation of 30 TEX. ADMIN. CODE § 290.46(m)(4).
3. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(b)(1).
4. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of ninety-five dollars (\$95.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of ninety-five dollars (\$95.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and 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 which are not raised here.
2. The penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to TCEQ and shall be sent with the notation "Re: Shawn M. Horvath DBA Aero Valley Water Service; Docket No. 2014-1598-PWS-E" to:

Financial Administration Division, Revenue Operations Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088
3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Respondent. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions 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. The Chief Clerk shall provide a copy of this fully executed Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Shawn M. Horvath DBA Aero Valley Water Service
Docket No. 2014-1598-PWS-E
Page 4

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY


For the Commission

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

June 9, 2015

CERTIFIED MAIL

Shawn M. Horvath
Aero Valley Water Service
5281 Kelly Drive
Roanoke, Texas 76262-3612

RE: Shawn M. Horvath dba Aero Valley Water Service
TCEQ Docket No. 2014-1598-PWS-E; Registration No. 0610243
Default Order Assessing Administrative Penalties

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Texas Commission on Environmental Quality's Enforcement Division at (512) 239-2545 or the Litigation Division at (512) 239-3400. If there are questions pertaining to the mailing of the order, then please contact Leslie Gann of the Office of the Chief Clerk at (512) 239-3319.

Sincerely,

Bridget C. Bohac

Bridget C. Bohac
Chief Clerk

BCB/lg

Enclosure

cc: Elizabeth Harkrider, Staff Attorney, TCEQ Litigation Division
Jeff Tate, Regional Contact, TCEQ Regional Office
Katy Montgomery, Enforcement Coordinator, TCEQ Enforcement Division

7013 3020 0000 8380 9246

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Receipt
(Endorsement)

SHAWN M HORVATH
AERO VALLEY WATER SERVICE
5281 KELLY DR
ROANOKE TX 76262-3612

Total Post

Sent to
Street, Apt. No., or PO Box No.
City, State, ZIP+4

Exhibit 4

TCEQ Order Appointing Eric Tamayo Temporary Manager of Aero Valley

Bryan W. Shaw Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niernmann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

October 26, 2015

Via Certified Mail Return Receipt Requested
Article No. 7013 3020 0001 1906 1723
Via First Class Mail, Postage Pre-Paid
Via Hand Delivery

Shawn M. Horvath d/b/a Aero Valley Water Service
5281 Kelly Drive
Roanoke, Texas 76262

Re: Shawn M. Horvath d/b/a Aero Valley Water Service
TCEQ DOCKET NO. 2015-1594-UCR-E
Notice of Emergency Order and of Hearing to Modify, Affirm, or Set Aside

Dear Mr. Horvath:

On October 23, 2015, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued an Emergency Order pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291. The party made the subject to this order is Shawn M. Horvath d/b/a Aero Valley Water Service. The Emergency Order appointed Eric Tamayo as temporary manager of the public water system located east of Interstate 35 West on Farm-to-Market Road 1171, one-half mile south on Cleveland Gibbs Road at Northwest Regional Airport, Denton County, Texas.

Pursuant to TEX. WATER CODE § 5.504 the Commission will consider whether to affirm, modify, or set aside the Emergency Order issued on October 23, 2015. Therefore, the Executive Director has scheduled this matter to be presented at the Commission's regular Agenda meeting on **December 9, 2015**. The Agenda begins at **9:30 a.m.** and will be held at **TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201 S, Austin, Texas**. The enclosed documentation is provided to you as a record of the materials that have been submitted to the Chief Clerk's Office and will be used in the Commission's Agenda process.

Additionally, please be advised that, pursuant to 30 TEX. ADMIN. CODE § 35.25(c), **you may request at the time of the Agenda an evidentiary hearing on issuance of the Emergency Order.** An Administrative Law Judge will be

Shawn M. Horvath d/b/a Aero Valley Water Service
October 26, 2015
Page 2

available to conduct a hearing at Agenda on December 9, 2015. If you have any questions, please contact the TCEQ Litigation Division at (512) 239-3400.

Sincerely,



Joel Cordero, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality
Joel.Cordero@tceq.texas.gov

Enclosure

cc: Jeff Tate, Water Section Manager, Dallas/Fort Worth Regional Office
Alex Latham, Receivership Coordinator
Vic McWherter, Office of Public Interest Counsel
Eric Tamayo c/o Town of Northlake, Town Hall, 1400 Farm-to-Market Road
407, Northlake, Texas 76247

Bryan W. Shaw, Ph.D., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

TCEQ DOCKET NO. 2015-1594-UCR-E

IN THE MATTER OF	§	BEFORE THE
AN ENFORCEMENT ACTION AGAINST	§	
SHAWN M. HORVATH DBA	§	TEXAS COMMISSION ON
AERO VALLEY WATER SERVICE;	§	
RN101198331;	§	ENVIRONMENTAL QUALITY

EMERGENCY ORDER APPOINTING A TEMPORARY MANAGER OF A WATER UTILITY

On October 26, 2015, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued this Emergency Order pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291. The party made subject to this order is Shawn M. Horvath d/b/a Aero Valley Water Service ("Horvath").

I. FINDINGS OF FACT

1. Horvath owns and operates a public water system located east of Interstate 35 West on Farm-to-Market Road 1171, one-half mile south on Cleveland Gibbs Road at Northwest Regional Airport, Denton County, Texas (the "Utility").
2. The Utility provides potable water service for compensation to approximately 38 service connections, serves at least 25 people per day for at least 60 days per year, and provides water for human consumption. As such, the Utility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(69).
3. The TCEQ alleges that the Utility discontinued the provision of service, has not provided an alternate source, and necessary repairs are required to ensure continuous and adequate water service.
4. Commission records show that the mailing address for Horvath is 5281 Kelly Drive, Roanoke, Texas 76262. In the most recent action by the Office of the Attorney General ("OAG") against Horvath, the OAG was unable to find and

- serve Horvath in Texas, which resulted in Horvath being served in Washington state. However, TCEQ has been informed that Horvath is residing at the address referenced above although he may be planning a move to Las Vegas.
5. No other source of water is available to the more than 25 people whose water is supplied by the Utility.
 6. On June 29, 2005, the Commission issued Default Order Docket No. 2002-0867-PWS-E against Shawn M. Horvath d/b/a Aero Valley Water Service. ("Exhibit A")
 7. On July 8, 2009, the Commission issued Default Order Docket No. 2008-0962-PWS-E against Shawn M. Horvath d/b/a Aero Valley Water Service. ("Exhibit B")
 8. On May 11, 2011, the TCEQ issued Default Order Docket No. 2010-0619-PWS-E against Shawn M. Horvath d/b/a Aero Valley Water Service. ("Exhibit C")
 9. On May 16, 2012, the TCEQ issued Default Order Docket No. 2011-0489-PWS-E against Shawn M. Horvath d/b/a Aero Valley Water Service. ("Exhibit D")
 10. On May 21, 2012, TCEQ Docket Nos. 2008-0962-PWS-E and 2010-0619-PWS-E were referred to the Office of the Attorney General ("OAG") due to Horvath's failure to comply with Final Commission Orders and continuous violations of Commission rules.
 11. On August 10, 2012, the TCEQ referred Default Order Docket No. 2011-0489-PWS-E as well as continuing violations of TCEQ Default Order Nos. 2008-0962-PWS-E and 2010-0619-PWS-E, to the OAG for enforcement.
 12. On July 2, 2014, the 261st District Court of Travis County signed a Final Default Judgment and Permanent Injunction ("Default Judgment") against Horvath on behalf of the TCEQ. ("Exhibit E")
 13. Investigations conducted from January 30, 2015 through March 6, 2015 and May 4, 2015 through May 15, 2015, documented Horvath's failure to comply with the Default Judgment.
 14. On June 3, 2015, the TCEQ issued Default Order Docket No. 2014-1598-PWS-E against Shawn M. Horvath d/b/a Aero Valley Water Service. ("Exhibit F")
 15. On July 24, 2015, TCEQ referred Horvath back to the OAG to pursue contempt of the Default Judgment.
 16. On October 20, 2015, Horvath informed TCEQ the Utility was experiencing a water outage since October 17, 2015 and he did not plan to provide an alternate source of water.
 17. On October 21, 2015, TCEQ received a complaint of a water outage from a

Utility customer. The complaint was investigated and confirmed by a TCEQ Dallas/Fort Worth Regional investigator.

18. As of October 26, 2015, the Utility is still experiencing a water outage and Horvath has not provided an alternate source of water for the Utility's customers.
19. A potential health hazard exists as a result of the Utility's failure to provide continuous and adequate service. Immediate repairs on the Utility are necessary to ensure the quality of the water in the State and to ensure the Utility operates in a safe manner and meets requirements in the Texas Water Code, the Texas Health and Safety Code, and TCEQ rules. Therefore, a temporary manager is necessary to assume operations of the Utility to ensure the quality of the water meets TCEQ rule requirements and complies with the Texas Water Code as well as the Texas Health and Safety Code, and is safe for public use and consumption. Although TCEQ has been informed that a well driller is onsite, it has been unable to confirm whether Horvath has hired the well driller or if repairs have been made.
20. Eric Tamayo, in his capacity as Public Works Director for the Town of Northlake, has agreed to serve as temporary manager of the Utility. Mr. Tamayo can be reached by telephone at (940) 242-5704 and his mailing address is c/o Town of Northlake, Town Hall, 1400 Farm-to-Market Road 407, Northlake, Texas 76247.
21. This Order is necessary to ensure that continuous and adequate water service is provided to the customers of the Utility to effectuate the purposes of the Texas Water Code and the Texas Health and Safety Code.

II.

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Horvath owns and operates the retail public utility as defined in TEX. WATER CODE § 13.002(19).
2. Findings of Fact Nos. 3 and 18 show that the Utility has abandoned operations and that the appointment of a temporary manager is justified as defined in TEX. WATER CODE §§ 13.412(f) and 13.4132 and 30 TEX. ADMIN. CODE § 291.142(c).
3. TEX. WATER CODE § 13.4132 authorizes the Commission to appoint a willing person to temporarily manage and operate a utility if the utility has discontinued service or abandoned operations or the provision of services or has been or is being referred to the Attorney General for the appointment of a receiver under TEX. WATER CODE § 13.412.
4. TEX. WATER CODE § 5.507 provides that the Commission may issue an Emergency Order appointing a willing person to temporarily manage and operate a utility under TEX. WATER CODE § 13.4132.

5. This Emergency Order may be issued without notice or hearing pursuant to TEX. WATER CODE § 5.501(b) and 30 TEX. ADMIN. CODE § 35.25.
6. TEX. WATER CODE § 5.501(c) and 30 TEX. ADMIN. CODE §§ 35.12 and 291.143(a) authorize the TCEQ Executive Director to issue this Emergency Order.
7. TEX. WATER CODE §§ 5.501 and 5.507 and 30 TEX. ADMIN. CODE § 291.143(a) authorize the Executive Director to appoint a person to temporarily manage and operate a utility that has discontinued or abandoned operations or which is being referred to the office of the Attorney General for the appointment of the receiver.
8. TEX. WATER CODE § 13.4132 provides to the temporary manager the powers and duties necessary to ensure continued operation of the utility and the provision of continuous and adequate services to customers including the power and duty to read meters, bill for services, collect revenues, disburse funds, access all system components, and request rate increases.
9. Notice of the emergency order, once it has been issued, is adequate if the notice is mailed or hand delivered to the last known address of the Utility's headquarters, in accordance with TEX. WATER CODE § 5.507. The last known address of Horvath is set forth in Finding of Fact No. 4.

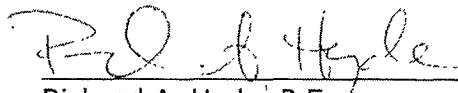
III. ORDER

1. This Order shall be effective on the date it is executed by the TCEQ Executive Director, i.e. October 26, 2015.
2. Immediately upon the effective date of this Emergency Order, Mr. Tamayo is hereby appointed to temporarily manage and operate the Utility.
3. Mr. Tamayo shall serve as temporary manager until such time as a receiver is appointed to operate the Utility by a court of proper jurisdiction, or 180 days after the effective date of this Order i.e. April 20, 2016, whichever occurs first.
4. Mr. Tamayo is authorized to exercise those powers and duties necessary to ensure the continued operations of the Utility and the provision of continuous and adequate services to customers, including the powers and duties set forth in TEX. WATER CODE § 13.4132.
5. Mr. Tamayo shall give the Executive Director an inventory of all Utility property received within sixty (60) days of the effective date of this Order.
6. Mr. Tamayo's requirement to post financial assurance with the TCEQ in an amount and type acceptable to the Executive Director has been waived by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 291.143(c).
7. Mr. Tamayo's compensation will come from Utility revenues in the amount of

twelve dollars (\$12.00) per month per connection.

8. Mr. Tamayo shall report to the Executive Director on a monthly basis in accordance with 30 TEX. ADMIN. CODE § 291.143(h).
9. Pursuant to TEX. WATER CODE § 5.504, the Commission will consider whether to affirm, modify or set aside this Order at its regular Agenda meeting on December 9, 2015 at 9:30 a.m., at TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201S, Austin, Texas. **At the December 9, 2015 Agenda meeting, Horvath may request an evidentiary hearing pursuant to 30 TEX. ADMIN. CODE § 35.25(c) for the purpose of presenting evidence and cross-examining witnesses regarding whether to affirm, modify, or set aside this Emergency Order. An Administrative Law Judge will be present at the Agenda to immediately hear the matter should a hearing be requested.**
10. The Chief Clerk shall provide a copy of this Order to each of the parties.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



Richard A. Hyde, P.E.
Executive Director

Exhibit 5

TCEQ Order Appointing Mark Patterson Temporary Manager of Aero Valley

Bryan W. Shaw, Ph.D., P.E., *Chairman*
Toby Baker, *Commissioner*
Jon Niermann, *Commissioner*
Richard A. Hyde, P.E., *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

April 20, 2016

**Via Certified Mail Return Receipt Requested
Via First Class Mail, Postage Pre-Paid**

Article No. 7004 1350 0002 7545 7459

Shawn M. Horvath d/b/a Aero Valley Water Service
5281 Kelly Drive
Roanoke, Texas 76262

Article No. 7004 1350 0002 7545 7442

Shawn M. Horvath d/b/a Aero Valley Water Service
3660 Boulder Highway
Las Vegas, Nevada 89121-1651

Re: Shawn M. Horvath d/b/a Aero Valley Water Service
TCEQ DOCKET NO. 2015-1594-UCR-E
Notice of Emergency Order and of Hearing to Modify, Affirm, or Set Aside

Dear Mr. Horvath:

On April 20, 2016, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued an Emergency Order pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291. The party made the subject to this order is Shawn M. Horvath d/b/a Aero Valley Water Service. The Emergency Order appointed PATTERSON WATER SUPPLY, LLC as temporary manager of the public water system located east of Interstate 35 West on Farm-to-Market Road 1171, one-half mile south on Cleveland Gibbs Road at Northwest Regional Airport, Denton County, Texas.

Pursuant to TEX. WATER CODE § 5.504 the Commission will consider whether to affirm, modify, or set aside the Emergency Order issued on April 20, 2016. Therefore, the Executive Director has scheduled this matter to be presented at the Commission's regular Agenda meeting on **May 11, 2016**. The Agenda begins at **9:30 a.m.** and will be held at **TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201 S, Austin, Texas**. The enclosed documentation is provided to you as a record of the materials that have been submitted to the Chief Clerk's Office and will be used in the Commission's Agenda process.

Shawn M. Horvath d/b/a Aero Valley Water Service
April 20, 2016
Page 2

Additionally, please be advised that, pursuant to 30 TEX. ADMIN. CODE § 35.25(c), **you may request at the time of the Agenda an evidentiary hearing on issuance of the Emergency Order.** An Administrative Law Judge will be available to conduct a hearing at Agenda on May 11, 2016. If you have any questions, please contact the TCEQ Litigation Division at (512) 239-3400.

Sincerely,



Meaghan Bailey, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality
meaghan.bailey@tceq.texas.gov

Enclosure

cc: Jeff Tate, Water Section Manager, Dallas/Fort Worth Regional Office
Daniel Pepin, Receivership Coordinator
Taylor Kilroy, Public Utility Commission
Vic McWherter, Office of Public Interest Counsel
PATTERSON WATER SUPPLY, LLC, 446 Graham Grove Road, Collinsville,
Texas 76233

TCEQ DOCKET NO. 2015-1594-UCR-E

**IN THE MATTER OF
AN ENFORCEMENT ACTION AGAINST
SHAWN M. HORVATH DBA
AERO VALLEY WATER SERVICE;
RN101198331;**

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

**EMERGENCY ORDER
RENEWAL APPOINTING A TEMPORARY MANAGER
OF A WATER UTILITY**

On April 20, 2016, the Executive Director of the Texas Commission on Environmental Quality (the "Commission" or "TCEQ") issued this Emergency Order pursuant to TEX. WATER CODE chs. 5 and 13, TEX. HEALTH & SAFETY CODE ch. 341, and 30 TEX. ADMIN. CODE chs. 35, 290, and 291. The party made subject to this order is Shawn M. Horvath d/b/a Aero Valley Water Service ("Horvath").

**I.
FINDINGS OF FACT**

1. Horvath owns and operates a public water system located east of Interstate 35 West on Farm-to-Market Road 1171, one-half mile south on Cleveland Gibbs Road at Northwest Regional Airport, Denton County, Texas (the "Utility").
2. The Utility provides potable water service for compensation to approximately 38 service connections, serves at least 25 people per day for at least 60 days per year, and provides water for human consumption. As such, the Utility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(69).
3. The TCEQ alleges that the Utility discontinued the provision of service, has not provided an alternate source, and necessary repairs are required to ensure continuous and adequate water service.
4. Commission records show that the most recent mailing addresses for Horvath are 5281 Kelly Drive, Roanoke, Texas 76262 and 3660 Boulder Highway, Las Vegas, Nevada 89121-1651.
5. No other source of water is available to the more than 25 people whose water is supplied by the Utility.
6. On June 29, 2005, the Commission issued Default Order Docket No. 2002-0867-PWS-E against Shawn M. Horvath d/b/a Aero Valley Water Service. ("Exhibit A")
7. On July 8, 2009, the Commission issued Default Order Docket No. 2008-0962-PWS-E against Shawn M. Horvath d/b/a Aero Valley Water Service. ("Exhibit B")

8. On May 11, 2011, the TCEQ issued Default Order Docket No. 2010-0619-PWS-E against Shawn M. Horvath d/b/a Aero Valley Water Service. ("Exhibit C")
9. On May 16, 2012, the TCEQ issued Default Order Docket No. 2011-0489-PWS-E against Shawn M. Horvath d/b/a Aero Valley Water Service. ("Exhibit D")
10. On May 21, 2012, TCEQ Docket Nos. 2008-0962-PWS-E and 2010-0619-PWS-E were referred to the Office of the Attorney General ("OAG") due to Horvath's failure to comply with Final Commission Orders and continuous violations of Commission rules.
11. On August 10, 2012, the TCEQ referred Default Order Docket No. 2011-0489-PWS-E as well as continuing violations of TCEQ Default Order Nos. 2008-0962-PWS-E and 2010-0619-PWS-E, to the OAG for enforcement.
12. On December 23, 2013, TCEQ received a complaint of a water outage from a Utility customer. On January 3, 2014, a TCEQ Dallas/Fort Worth Regional investigator performed an investigation at the Utility, during which Horvath confirmed that a water outage occurred from December 19, 2013 to December 23, 2013.
13. On April 11, 2014, TCEQ received a complaint of a water outage from a Utility customer. A TCEQ Dallas/Fort Worth Regional investigator performed an investigation of the Utility from April 1, 2014 through April 15, 2014, and determined that a water outage occurred on April 11, 2014.
14. On July 2, 2014, the 261st District Court of Travis County signed a Final Default Judgment and Permanent Injunction ("Default Judgment") against Horvath on behalf of the TCEQ. ("Exhibit E")
15. Investigations conducted from January 30, 2015 through March 6, 2015 and May 4, 2015 through May 15, 2015, documented Horvath's failure to comply with the Default Judgment.
16. On June 3, 2015, the TCEQ issued Default Order Docket No. 2014-1598-PWS-E against Shawn M. Horvath d/b/a Aero Valley Water Service. ("Exhibit F")
17. On July 24, 2015, TCEQ referred Horvath back to the OAG to pursue contempt of the Default Judgment.
18. On October 20, 2015, Horvath informed TCEQ the Utility was experiencing a water outage since October 17, 2015 and he did not plan to provide an alternate source of water.
19. On October 21, 2015, TCEQ received a complaint of a water outage from a Utility customer. The complaint was investigated and confirmed by a TCEQ Dallas/Fort Worth Regional investigator.

20. As of October 26, 2015, the Utility was still experiencing a water outage and Horvath had not provided an alternate source of water for the Utility's customers.
21. Horvath serves as the sole owner and operator of the Utility. No additional personnel are employed or authorized to operate the Utility.
22. A potential health hazard exists as a result of the Utility's failure to provide continuous and adequate service. Immediate repairs on the Utility are necessary to ensure the quality of the water in the State and to ensure the Utility operates in a safe manner and meets requirements in the Texas Water Code, the Texas Health and Safety Code, and TCEQ rules. Eric Tamayo was serving as the temporary manager of the Utility through an Emergency Order issued on October 26, 2015, and modified by the Commission on December 17, 2015, but his term expired April 20, 2016. Therefore, a temporary manager is necessary to continue operations of the Utility to ensure the quality of the water meets TCEQ rule requirements and complies with the Texas Water Code as well as the Texas Health and Safety Code, and is safe for public use and consumption.
23. PATTERSON WATER SUPPLY, LLC has agreed to serve as temporary manager of the Utility, and its mailing address is 446 Graham Grove Road, Collinsville, Texas 76233.
24. This Order is necessary to ensure that continuous and adequate water service is provided to the customers of the Utility to effectuate the purposes of the Texas Water Code and the Texas Health and Safety Code.
25. This matter was referred to the Attorney General's Office on December 9, 2015, so that a petition may be filed to appoint a receiver under TEX. WATER CODE § 13.412 to guarantee continuous and adequate service to customers of the Utility.

II. CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Horvath owns and operates the retail public utility as defined in TEX. WATER CODE § 13.002(19).
2. Findings of Fact Nos. 3 and 5 through 21 show that the Utility has abandoned operations and that the appointment of a temporary manager is justified as defined in TEX. WATER CODE §§ 13.412(f) and 13.4132 and 30 TEX. ADMIN. CODE § 291.142(c).
3. TEX. WATER CODE § 13.4132 authorizes the Commission to appoint a willing person to temporarily manage and operate a utility if the utility has discontinued service or abandoned operations or the provision of services or has been or is being referred to the Attorney General for the appointment of a receiver under TEX. WATER CODE § 13.412.

4. TEX. WATER CODE § 5.507 provides that the Commission may issue an Emergency Order appointing a willing person to temporarily manage and operate a utility under TEX. WATER CODE § 13.4132.
5. This Emergency Order may be issued without notice or hearing pursuant to TEX. WATER CODE § 5.501(b) and 30 TEX. ADMIN. CODE § 35.25.
6. TEX. WATER CODE § 5.501(c) and 30 TEX. ADMIN. CODE §§ 35.12 and 291.143(a) authorize the TCEQ Executive Director to issue this Emergency Order.
7. TEX. WATER CODE §§ 5.501 and 5.507 and 30 TEX. ADMIN. CODE § 291.143(a) authorize the Executive Director to appoint a person to temporarily manage and operate a utility that has discontinued or abandoned operations or which is being referred to the office of the Attorney General for the appointment of the receiver.
8. TEX. WATER CODE § 13.4132 provides to the temporary manager the powers and duties necessary to ensure continued operation of the utility and the provision of continuous and adequate services to customers including the power and duty to read meters, bill for services, collect revenues, disburse funds, access all system components, and request rate increases.
9. Notice of the Emergency Order, once it has been issued, is adequate if the notice is mailed or hand delivered to the last known address of the Utility's headquarters, in accordance with TEX. WATER CODE § 5.507. The last known addresses for Horvath are set forth in Finding of Fact No. 4.

III. ORDER

1. This Order shall be effective on the date it is executed by the TCEQ Executive Director, i.e. April 20, 2016.
2. Immediately upon the effective date of this Order, PATTERSON WATER SUPPLY, LLC is hereby appointed to temporarily manage and operate the Utility.
3. PATTERSON WATER SUPPLY, LLC shall serve as temporary manager until such time as a receiver is appointed to operate the Utility by a court of proper jurisdiction, or 180 days after the effective date of this Order i.e. October 17, 2016, whichever occurs first.
4. PATTERSON WATER SUPPLY, LLC is authorized to exercise those powers and duties necessary to ensure the continued operations of the Utility and the provision of continuous and adequate services to customers, including the powers and duties set forth in TEX. WATER CODE § 13.4132.
5. PATTERSON WATER SUPPLY, LLC shall give the Executive Director an inventory of all Utility property received within sixty (60) days of the effective date of this Order.

6. PATTERSON WATER SUPPLY, LLC's requirement to post financial assurance with the TCEQ in an amount and type acceptable to the Executive Director has been waived by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 291.143(c).
7. PATTERSON WATER SUPPLY, LLC's compensation will come from Utility revenues in the amount of twelve dollars (\$12.00) per month per connection.
8. PATTERSON WATER SUPPLY, LLC shall report to the Executive Director on a monthly basis in accordance with 30 TEX. ADMIN. CODE § 291.143(h).
9. Pursuant to TEX. WATER CODE § 5.504, the Commission will consider whether to affirm, modify or set aside this Order at its regular Agenda meeting on May 11, 2016 at 9:30 a.m., at TCEQ Park 35 Complex, 12118 North I-35, Building E, Room 201S, Austin, Texas. **At the May 11, 2016 Agenda meeting, Horvath may request an evidentiary hearing pursuant to 30 TEX. ADMIN. CODE § 35.25(c) for the purpose of presenting evidence and cross-examining witnesses regarding whether to affirm, modify, or set aside this Emergency Order. An Administrative Law Judge will be present at the Agenda to immediately hear the matter should a hearing be requested.**
10. The Chief Clerk shall provide a copy of this Order to each of the parties.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Richard A. Hyde, P.E.
Executive Director