EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-0762-PWS-E **TCEQ ID:** RN103172078 **CASE NO.:** 33482

RESPONDENT NAME: Post Oak Development of Texas, Inc.

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
X PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Dancing Bear, two miles southeast of the intersection of Farm-to-Market Road 1283 and Private Road 37, Medina County

TYPE OF OPERATION: Public water supply

SMALL BUSINESS: X **Yes** ___ **No**

OTHER SIGNIFICANT MATTERS: Four complaints were received by customers of the water system, the first on January 29, 2007, stating that there was a loss of water pressure. The other three complaints were received February 9, February 13, and March 26, 2007, alleging the same facts as the first complainant. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: Complaints were received, but the complainants have not expressed the desire to protest this action or to speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on September 17, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Ms. Yuliya Dunaway, Enforcement Division, Enforcement Team 2, R-13, (210) 403-4077; Mr. David Van Soest, Enforcement Division, MC 219, (512) 239-0468

Respondent: Mr. Thomas Glendenning, President, Post Oak Development of Texas, Inc., 603 Navarro Street, Suite M-2, San Antonio, Texas 78205; Mr. Kurt Salisbury, Vice President/Construction and Development, Water Operator, Post Oak Development of Texas, Inc., 603 Navarro Street, Suite M-2, San Antonio, Texas 78205

Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: _X_ Complaint __ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** January 29, 2007, February 9 and 13, 2007, and March 26, 2007 **Date of Investigation Relating to this Case:** March 30, 2007. **Date of NOE Relating to this Case:** April 18, 2007 (NOE) **Background Facts:** This was a complaint investigation. Four violations were documented. **WATER** 1) Failure to issue a boil water notification to the customers of the water supply within 24 hours after a loss of distribution system pressure and water outage occurred. Specifically, no boil water notices were issued after a loss of water pressure followed by cloudy water with debris in resident's drinking water that occurred on January 20, 2007 and after a water outage that occurred from March 16, 2007 through March 18, 2007 [30 TEX. ADMIN. CODE § 290.46(q)]. 2) Failure to insure that all new or repaired water distribution facilities are not placed into service without the prior guidance and approval of a licensed water works operator. Specifically, it was documented that on January 20, 2007 the water system allowed new distribution lines to be placed into service without prior approval of a licensed water works operator, which caused contamination of the water supply with particulates and unknown materials, which had not been flushed from the mains [30 TEX. ADMIN. CODE § 290.46(e)(2)(A)]. 3) Failure to provide an adequate ventilation for all enclosures in which gas chlorine is being stored or fed. Specifically, at the time of the investigation, the fan in the chlorine room	**Total Assessed:** $744 **Total Deferred:** $148 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $596 **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** 1) The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility as of April 30, 2007: a. Provided the chlorination room with an adequate ventilation; and b. Purchased chlorine solution of known concentration and verified the accuracy of manual disinfectant residual analyzers. **Ordering Provisions:** 2) The Order will require the Respondent to: a. Immediately upon the effective date of this Agreed Order: i. Implement procedures to ensure that the water system shall not allow new or repaired production, treatment, storage, pressure maintenance, or distribution facilities to be placed into service without the prior guidance and approval of a licensed water works operator; and ii. Implement procedures to ensure that boil water notifications are provided to the customers of the water supply; b. Within 30 days after the effective date of this Agreed Order, submit written certification including detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.

was not in working condition [30 TEX. ADMIN. CODE § 290.42(e)(4)(C)]. 4) Failure to verify the accuracy of manual disinfectant residual analyzers in the chlorine residual test kit at least every 30 days using chlorine solutions of known concentrations [30 TEX. ADMIN. CODE § 290.46(s)(2)(C)(i)].		

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) — *PCW Revision April 26, 2007*

DATES					
Assigned	30-Apr-2007				
PCW	7-May-2007	Screening	15-May-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Post Oak Development of Texas, Inc.		
Reg. Ent. Ref. No.	RN103172078		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	33482	No. of Violations	4
Docket No.	2007-0762-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Enf. Coordinator	Yuliya Dunaway
Multi-Media		EC's Team	EnforcementTeam 2
Admin. Penalty $ Limit Minimum	$50	Maximum	$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $600

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History — 24% Enhancement — *Subtotals 2, 3, & 7* $144

Notes: The Respondent has two prior NOVs for non-similar violations as those in the current enforcement action and an agreed final enforcement order containing a denial of liability.

Culpability — No — 0% Enhancement — *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 0% Reduction — *Subtotal 5* $0

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

Notes: The Respondent does not meet the good faith criteria.

0% Enhancement* — *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$721
Approx. Cost of Compliance	$4,000

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $744

OTHER FACTORS AS JUSTICE MAY REQUIRE — *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes:

Final Penalty Amount $744

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $744

DEFERRAL — 20% Reduction — *Adjustment* -$148

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $596

Screening Date 15-May-2007 **Docket No.** 2007-0762-PWS-E **PCW**

Respondent Post Oak Development of Texas, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 33482 *PCW Revision April 26, 2007*

Reg. Ent. Reference No. RN103172078

Media [Statute] Public Water Supply

Enf. Coordinator Yuliya Dunaway

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which notices were submitted*)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 24%

>> **Repeat Violator (Subtotal 3)**

No

Adjustment Percentage (Subtotal 3) 0%

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

The Respondent has two prior NOVs for non-similar violations as those in the current enforcement action and an agreed final enforcement order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 24%

Screening Date 15-May-2007 **Docket No.** 2007-0762-PWS-E **PCW**

Respondent Post Oak Development of Texas, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 33482 *PCW Revision April 26, 2007*

Reg. Ent. Reference No. RN103172078

Media [Statute] Public Water Supply

Enf. Coordinator Yuliya Dunaway

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.46(q)

Violation Description Failed to issue a boil water notification to the customers of the water supply within 24 hours after a loss of distribution system pressure and water outage occurred. Specifically, no boil water notices were issued after a loss of water pressure followed by cloudy water with debris in resident's drinking water that occurred on January 20, 2007 and after a water outage that occurred from March 16, 2007 through March 18, 2007.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirements were not met.

Adjustment $900

$100

Violation Events

Number of Violation Events 2

2 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $200

Two single events (one per each incident) are recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $610

Statutory Limit Test

Violation Final Penalty Total $248

This violation Final Assessed Penalty (adjusted for limits) $248

Economic Benefit Worksheet

Respondent Post Oak Development of Texas, Inc.
Case ID No. 33482
Reg. Ent. Reference No. RN103172078
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)	$300	30-Mar-2007	1-Dec-2007	0.7	$10	n/a	$10

Notes for DELAYED costs: The delayed costs include the amount to implement procedures to ensure that boil notifications are provided to the customers, calculated from the date of the investigation to the estimated date of compliance.

Avoided Costs							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]	$300	20-Jan-2007	21-Jan-2007	0.0	$0	$300	$300
Other (as needed)	$300	18-Mar-2007	19-Mar-2007	0.0	$0	$300	$300

Notes for AVOIDED costs: The avoided costs include the amount required to provide a boil water notice to all customers of the water supply, calculated for the 24 hours period after a loss of pressure and water outage occurred.

Approx. Cost of Compliance $900 **TOTAL** $610

Screening Date 15-May-2007 **Docket No.** 2007-0762-PWS-E **PCW**

Respondent Post Oak Development of Texas, Inc.

Policy Revision 2 (September 2002)

Case ID No. 33482

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN103172078

Media [Statute] Public Water Supply

Enf. Coordinator Yuliya Dunaway

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 290.46(e)(2)(A)

Violation Description Failed to insure that all new or repaired water distribution facilities are not placed into service without the prior guidance and approval of a licensed water works operator. Specifically, it was documented that on January 20, 2007 the water system allowed new distribution lines to be placed into service without prior approval of a licensed water works operator, which caused contamination of the water supply with particulates and unknown materials, which had not been flushed from the mains.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Without proper guidance and approval, all new or repaired water distribution facilities placed into service resulted in the exposure of customers of the water supply to an insignificant amount of contaminants which do not exceed levels that are protective of human health.

Adjustment $900

$100

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $100

One single event is recommended for the incident that occurred on January 20, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $0

Statutory Limit Test

Violation Final Penalty Total $124

This violation Final Assessed Penalty (adjusted for limits) $124

Economic Benefit Worksheet

Respondent Post Oak Development of Texas, Inc.
Case ID No. 33482
Reg. Ent. Reference No. RN103172078
Media Public Water Supply
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)	$2,000	20-Jan-2007	21-Jan-2007	0.0	$0	n/a	$0

Notes for DELAYED costs: The delayed costs include the amount required to provide a guidance and approval of a licensed water works operator prior placing new, unflushed distribution lines into service, calculated for the period of time when the incident occurred.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0

Notes for AVOIDED costs: There are no avoided costs associated with this violation.

Approx. Cost of Compliance $2,000

TOTAL $0

Screening Date 15-May-2007 **Docket No.** 2007-0762-PWS-E **PCW**

Respondent Post Oak Development of Texas, Inc.

Policy Revision 2 (September 2002)

Case ID No. 33482

PCW Revision April 26, 2007

Reg. Ent. Reference No. RN103172078

Media [Statute] Public Water Supply

Enf. Coordinator Yuliya Dunaway

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 290.42(e)(4)(C)

Violation Description Failed to provide an adequate ventilation for all enclosures in which gas chlorine is being stored or fed. Specifically, at the time of the investigation, the fan in the chlorine room was not in working condition.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failure to provide an adequate ventilation for all enclosures in which gas chlorine is being stored or fed could expose water system's personnel to a significant amount of chlorine gas that would exceed levels protective of human health.

Adjustment $750

$250

Violation Events

Number of Violation Events 1

31 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $250

One monthly event is recommended from the date of the investigation, March 30, 2007, to the date of compliance, April 30, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $6

Statutory Limit Test

Violation Final Penalty Total $310

This violation Final Assessed Penalty (adjusted for limits) $310

Economic Benefit Worksheet

Respondent Post Oak Development of Texas, Inc.
Case ID No. 33482
Reg. Ent. Reference No. RN103172078
Media Public Water Supply
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment	$1,000	30-Mar-2007	30-Apr-2007	0.1	$0	$6	$6
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: The delayed costs include the amount to provide a working forced air ventilation system in chlorination room, calculated from the date of the investigation to the date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0

Notes for AVOIDED costs: There are no avoided costs associated with this violation.

Approx. Cost of Compliance: $1,000

TOTAL: $6

Screening Date 15-May-2007 **Docket No.** 2007-0762-PWS-E **PCW**

Respondent Post Oak Development of Texas, Inc. *Policy Revision 2 (September 2002)*

Case ID No. 33482 *PCW Revision April 26, 2007*

Reg. Ent. Reference No. RN103172078

Media [Statute] Public Water Supply

Enf. Coordinator Yuliya Dunaway

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 290.46(s)(2)(C)(i)

Violation Description Failed to verify the accuracy of manual disinfectant residual analyzers in the chlorine residual test kit at least every 30 days using chlorine solutions of known concentrations.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failure to verify the accuracy of the disinfectant analyzers could result in customers of the water supply being exposed to an insignificant amounts of contamination which would not exceed levels that are protective of human health.

Adjustment $950

$50

Violation Events

Number of Violation Events 1 | 31 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $50

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $105

Statutory Limit Test

Violation Final Penalty Total $62

This violation Final Assessed Penalty (adjusted for limits) $62

Economic Benefit Worksheet

Respondent Post Oak Development of Texas, Inc.
Case ID No. 33482
Reg. Ent. Reference No. RN103172078
Media Public Water Supply
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or $							
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Engineering/construction				0.0	$0	$0	$0
Land				0.0	$0	n/a	$0
Record Keeping System				0.0	$0	n/a	$0
Training/Sampling				0.0	$0	n/a	$0
Remediation/Disposal				0.0	$0	n/a	$0
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: There are no delayed costs associated with this violation.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]	$100	30-Mar-2007	30-Apr-2007	1.0	$5	$100	$105
Other (as needed)				0.0	$0	$0	$0

Notes for AVOIDED costs: The avoided costs include the amount to verify the accuracy of the chlorine residual analyzers once per month, calculated from the date of the investigation to date of compliance.

31

Approx. Cost of Compliance: $100

TOTAL: $105

Compliance History

Customer/Respondent/Owner-Operator:	CN600529879	Post Oak Development of Texas, Inc.	Classification: AVERAGE	Rating: 2.88
Regulated Entity:	RN103172078	DANCING BEAR	Classification: AVERAGE	Site Rating: 2.50
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION		1630045
Location:	2 MI SE OF FM 1283 AND PR 37, MEDINA COUNTY		Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 13 - SAN ANTONIO			
Date Compliance History Prepared:	May 07, 2007			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 07, 2002 to May 07, 2007			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Yuliya Dunaway Phone: (210) 403-4077

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?	No
2. Has there been a (known) change in ownership of the site during the compliance period?	No
3. If Yes, who is the current owner?	N/A
4. if Yes, who was/were the prior owner(s)?	N/A
5. When did the change(s) in ownership occur?	N/A

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 08/20/2006 ADMINORDER 2006-0425-PWS-E

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.39(h)(1)

Description: Failure to submit modification plans for the water system's storage facilities and obtain Commission approval of those plans prior to making a significant change to the storage facilities, including changing from a 25,000 gallon elevated storage tank to two 5,000 gallon pressure tanks.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(A)

Description: Failure to submit well completion data to the Commission prior to placing a public water supply well into service.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

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

1 11/15/2004 (335713)
2 05/16/2005 (379517)
3 03/27/2006 (459442)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 11/16/2004 (335713)

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 281, SubChapter A 281.1

Description: Failure to develop and implement a Storm Water Pollution Prevention Plan and obtain proper permit.

Date: 05/17/2005 (379517)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(A)

Description: Failure to submit the well completion information as described in this rule and receiving written approval from the TCEQ central office before placing this well into public water supply service.

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING POST OAK DEVELOPMENT OF TEXAS, INC. RN103172078	§ § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-0762-PWS-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Post Oak Development of Texas, Inc. ("Post Oak Development") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and Post Oak Development appear before the Commission and together stipulate that:

1. Post Oak Development owns and operates a public water supply two miles southeast of the intersection of Farm-to-Market Road 1283 and Private Road 37, Medina County, Texas (the "Facility") that has approximately 40 service connections and serves at least 25 people per day for at least 60 days per year.

2. The Commission and Post Oak Development agree that the Commission has jurisdiction to enter this Agreed Order, and that Post Oak Development is subject to the Commission's jurisdiction.

3. Post Oak Development received notice of the violations alleged in Section II ("Allegations") on or about April 23, 2007.

4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Post Oak Development of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

5. An administrative penalty in the amount of Seven Hundred Forty-Four Dollars ($744) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Post Oak Development has paid Five Hundred Ninety-Six Dollars ($596) of the administrative penalty and One Hundred Forty-Eight Dollars ($148) is deferred contingent upon Post Oak Development's

timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Post Oak Development fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Post Oak Development to pay all or part of the deferred penalty.

6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

7. The Executive Director of the TCEQ and Post Oak Development have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Post Oak Development has not complied with one or more of the terms or conditions in this Agreed Order.

9. The Executive Director recognizes that Post Oak Development has implemented the following corrective measures at the Facility as of April 30, 2007:

   a. Provided the chlorination room with an adequate ventilation; and

   b. Purchased chlorine solution of known concentration and verified the accuracy of manual disinfectant residual analyzers.

10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, Post Oak Development is alleged to have:

1. Failed to issue a boil water notification to the customers of the water supply within 24 hours after a loss of distribution system pressure and water outage occurred, in violation of 30 TEX. ADMIN. CODE § 290.46(q), as documented during a record review conducted on March 30, 2007.

2. Failed to insure that all new or repaired water distribution facilities are not placed into service without the prior guidance and approval of a licensed water works operator, in violation of 30 TEX. ADMIN. CODE § 290.46(e)(2)(A), as documented during a record review conducted on March 30, 2007.

3. Failed to provide an adequate ventilation for all enclosures in which gas chlorine is being stored or fed, in violation of 30 TEX. ADMIN. CODE § 290.42(e)(4)(C), as documented during a record review conducted on March 30, 2007.

4. Failed to verify the accuracy of manual disinfectant residual analyzers in the chlorine residual test kit at least every 30 days using chlorine solutions of known concentrations, in violation of 30 TEX. ADMIN. CODE § 290.46(s)(2)(C)(i), as documented during a record review conducted on March 30, 2007.

III. DENIALS

Post Oak Development generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Post Oak Development pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and Post Oak Development's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Post Oak Development of Texas, Inc., Docket No. 2007-0762-PWS-E" to:

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

2. It is further ordered that Post Oak Development shall undertake the following technical requirements:

   a. Immediately upon the effective date of this Agreed Order:

      i. Implement procedures to ensure that the water system shall not allow new or repaired production, treatment, storage, pressure maintenance, or distribution facilities to be placed into service without the prior guidance and approval of a licensed water works operator, as required by 30 TEX. ADMIN. CODE § 290.46; and

      ii. Implement procedures to ensure that boil water notifications are provided to the customers of the water supply, as required by 30 TEX. ADMIN. CODE § 290.46;

   b. Within 30 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

Water Section, Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

3. The provisions of this Agreed Order shall apply to and be binding upon Post Oak Development. Post Oak Development is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Post Oak Development shall be made in writing to the Executive Director. Extensions are not effective until Post Oak Development receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

5. This Agreed Order, issued by the Commission, shall not be admissible against Post Oak Development in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

6. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

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

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 8/29/07
For the Executive Director Date

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

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

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

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

_____ 7-10-2007
Signature Date

KURT SALISBURY VP/CONSTRUCTION & DEVELOPMENT
Name (Printed or typed) Title WATER OPERATOR
Authorized Representative of #WO0021208
Post Oak Development of Texas, Inc.

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