EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0049-PWS-E TCEQ ID: RN104189303 CASE NO.: 32151
RESPONDENT NAME: Tim O'Brien dba O'Brien's Restaurant

ORDER TYPE:

_X_ 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__AMENDED ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__SHUTDOWN ORDER	__FINDINGS DEFAULT ORDER	__EMERGENCY ORDER	

CASE TYPE:

__AGRICULTURE	__AIR	__INDUSTRIAL AND HAZARDOUS WASTE	__MUNICIPAL SOLID WASTE
__OCCUPATIONAL CERTIFICATION	__PETROLEUM STORAGE TANKS	_X_ PUBLIC WATER SUPPLY	__RADIOACTIVE WASTE
__MULTI-MEDIA (check all that apply)	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL	__USED OIL
__USED OIL FILTER	__WATER QUALITY		

SITE WHERE VIOLATION(S) OCCURRED: O'Brien's Restaurant, 848 State Highway 46 East, Bergheim, Kendall County

TYPE OF OPERATION: Restaurant with a public water supply

SMALL BUSINESS: _X_ Yes ___No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on April 2, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Rebecca Clausewitz, Enforcement Division, Enforcement Section I, MC R-13, (210) 403-4012; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
Respondent: Mr. Tim O'Brien, Owner, O'Brien's Restaurant, 848 State Highway 46 East, Boerne, Texas 78006
Respondent's Attorney: Not represented by counsel on this enforcement matter

RESPONDENT'S NAME: Tim O'Brien dba O'Brien's Restaurant
DOCKET NO.: 2007-0049-PWS-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___Complaint __X_Routine ___Enforcement Follow-up ___Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** October 31, 2006 **Date of NOE Relating to this Case:** December 18, 2006 (NOE) **Background Facts:** This was a routine investigation. One violation was documented. **WATER** Failed to submit water system plans and specifications prepared by a licensed, professional engineer to the Commission for review and approval [30 Tex. Admin. Code §§ 290.39(h)(1) and 290.46(a)].	**Total assessed:** $726 **Total Deferred:** $145 _X_Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $581 **Site Compliance History Classification:** __High __Average __Poor **Person Compliance History Classification:** __High __Average __Poor **Major Source:** __Yes _X_No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** 1) The Executive Director recognizes that, on December 29, 2006, as-built plans and specifications for the Facility, prepared by a licensed, professional engineer, were received by the TCEQ San Antonio Regional Office. **Ordering Provisions:** 2) The order will require the Respondent to: a. Respond in writing to all Commission requests for additional information concerning the submission and approval of the as-built plans and specifications for the Facility within 30 days of such requests, or by any other deadline specified in writing; b. Within 90 days after the effective date of this Agreed Order, obtain Commission approval of the as-built plans and specifications for the Facility; and c. Within 105 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision 2.b.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision December 8, 2006*

TCEQ

DATES					
Assigned	18-Dec-2006				
PCW	8-Jan-2007	Screening	8-Jan-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Tim O'Brien dba O'Brien's Restaurant		
Reg. Ent. Ref. No.	RN104189303		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	32151	No. of Violations	1
Docket No.	2007-0049-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Enf. Coordinator	Rebecca Clausewitz
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 — 21% Enhancement — *Subtotals 2, 3, & 7* $126

Notes: The compliance history enhancement is due to one prior Notice of Violation ("NOV") containing violations that are the same as or similar to the violations in the current enforcement action and eight prior NOVs containing violations that are dissimilar to the current violation.

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

Notes: 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

Total EB Amounts	$481
Approx. Cost of Compliance	$2,000

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $726

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 $726

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $726

DEFERRAL — 20% Reduction — *Adjustment* -$145

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 $581

Screening Date	8-Jan-2007	**Docket No.** 2007-0049-PWS-E	**PCW**
Respondent	Tim O'Brien dba O'Brien's Restaurant		*Policy Revision 2 (September 2002)*
Case ID No.	32151		*PCW Revision December 8, 2006*
Reg. Ent. Reference No.	RN104189303		
Media [Statute]	Public Water Supply		
Enf. Coordinator	Rebecca Clausewitz		

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	1	5%
	Other written NOVs	8	16%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which notices were submitted*)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		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) 21%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The compliance history enhancement is due to one prior Notice of Violation ("NOV") containing violations that are the same as or similar to the violations in the current enforcement action and eight prior NOVs containing violations that are dissimilar to the current violation.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 21%

Screening Date	8-Jan-2007	**Docket No.** 2007-0049-PWS-E	**PCW**
Respondent	Tim O'Brien dba O'Brien's Restaurant		*Policy Revision 2 (September 2002)*
Case ID No.	32151		*PCW Revision December 8, 2006*
Reg. Ent. Reference No.	RN104189303		
Media [Statute]	Public Water Supply		
Enf. Coordinator	Rebecca Clausewitz		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.39(h)(1) and 290.46(a)

Violation Description Failed to submit water system plans and specifications prepared by a licensed, professional engineer to the Commission for review and approval.

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 requirement was not met.

Adjustment $900

$100

Violation Events

Number of Violation Events: 6

1006 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	x
annual	
single event	

Violation Base Penalty $600

Six semiannual events are recommended, calculated from the date of the initial Notice of Violation issued on April 8, 2004 which instructed the Respondent to submit the as-built plans and specifications, to the date of screening, January 8, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $481

Statutory Limit Test

Violation Final Penalty Total $726

This violation Final Assessed Penalty (adjusted for limits) $726

Economic Benefit Worksheet

Respondent Tim O'Brien dba O'Brien's Restaurant
Case ID No. 32151
Reg. Ent. Reference No. RN104189303
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
	No commas or $						
Delayed Costs							
Equipment				0.0	$0	$0	$0
Buildings				0.0	$0	$0	$0
Other (as needed)	$2,000	24-Feb-2004	1-Aug-2007	3.4	$23	$468	$481
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 prepare, submit, and obtain approval of water system plans and specifications that have been prepared by a licensed, professional engineer, calculated from the date of the initial 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]				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 $481

Compliance History

Customer/Respondent/Owner-Operator:	CN602580656	O'BRIEN, TIM	Classification:	Rating:
Regulated Entity:	RN104189303	O'BRIEN'S RESTAURANT	Classification:	Site Rating:

ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	1300052
Location:	848 STATE HIGHWAY 46 E, BERGHEIM, TX, 78006		
TCEQ Region:	REGION 13 - SAN ANTONIO		
Date Compliance History Prepared:	January 05, 2007		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	January 05, 2002 to January 05, 2007		

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

Name: Rebecca Clausewitz Phone: (210) 403-4012

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?	Yes
2. Has there been a (known) change in ownership 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.

N/A

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

N/A

C. Chronic excessive emissions events.

N/A

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

1	12/01/2005	(482848)
2	01/25/2006	(482863)
3	09/01/2005	(402438)
4	07/11/2006	(482798)
5	04/07/2004	(264849)
6	12/15/2006	(517483)
7	10/31/2005	(482837)
8	03/22/2006	(482878)
9	04/28/2006	(482901)
10	02/23/2006	(482870)
11	12/21/2005	(482854)
12	10/03/2005	(482428)

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

Date: 12/21/2005 (482854)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)

5A THC Chapter 341, SubChapter A 341.033(d)

Description: Failure to collect any routine monitoring samples in 11/2005.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: Failure to post a PN for not collecting any routine monitoring samples in 11/2005.

Date: 10/31/2005 (482837)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
5A THC Chapter 341, SubChapter A 341.033(d)
Description: Failure to collect any routine monitoring samples in 09/2005.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: Failure to post a PN for not collecting any routine monitoring samples in 09/2005.

Date: 12/01/2005 (482848)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
5A THC Chapter 341, SubChapter A 341.033(d)
Description: Failure to collect any routine monitoring samples in 10/2005.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: Failure to post a PN for not collecting any routine monitoring samples in 10/2005.

Date: 03/22/2006 (482878)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
5A THC Chapter 341, SubChapter A 341.033(d)
Description: Failure to collect any routine monitoring samples in 02/2006.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: Failure to post a PN for not collecting any routine monitoring samples in 02/2006.

Date: 02/23/2006 (482870)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
5A THC Chapter 341, SubChapter A 341.033(d)
Description: Failure to collect any routine monitoring samples in 01/2006.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: Failure to post a PN for not collecting any routine monitoring samples in 01/2006.

Date: 04/08/2004 (264849)
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter F 290.110(d)(3)(C)(ii)
Description: Failure to possess a chlorine test kit which uses the DPD method to determine the free chlorine residual at various locations to ensure the proper chlorine residual is being maintained throughout the distribution system.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)
Description: Failure to make available sanitary control easements for the well at the time of inspection.

Self Report? NO Classification: Minor

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

Description: Failure to provide the well with a concrete sealing block extending at least 3 feet from the exterior well casing in all directions.

Self Report? NO Classification: Minor

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

Description: Failure to provide the well with a screened casing vent, which must face downward and be elevated so as to minimize the drawing of contaminants into the well. The screening must be l6-mesh or finer corrosion-resistant screen.

Self Report? NO Classification: Minor

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

Description: Failure to install a flow meter on the well pump discharge line to provide water usage records and to assist in more efficient system operation.

Self Report? NO Classification: Moderate

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

Description: Failure to protect the well unit with an intruder-resistant fence or a locked, ventilated well house to exclude possible contamination or damage to the facilities by trespassers.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(n)(1)

Description: Failure to secure the services of a registered professional engineer well versed in the design and construction of public water systems so that "as-built" plans and specifications can be prepared and submitted for our review.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.43(e)

Description: Failure to enclose the potable water storage tank and pressure maintenance facilities with an intruder-resistant fence with lockable gates or a locked, ventilated house.

Date: 10/03/2005 (482428)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)

30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

5A THC Chapter 341, SubChapter A 341.033(d)

Description: Failed to collect routine bacteriological samples to monitor for microbial contaminants and post public notice of monitoring violations for the months of August, September, October, November, and December 2005 and January, February, and March 2006.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: Failure to post a PN for not collecting any routine monitoring samples in 08/2005.

Date: 04/28/2006 (482901)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)

5A THC Chapter 341, SubChapter A 341.033(d)

Description: Failure to collect any routine monitoring samples in 03/2006.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: Failure to post a PN for not collecting any routine monitoring samples in 03/2006.

Date: 01/25/2006 (482863)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)

5A THC Chapter 341, SubChapter A 341.033(d)

Description: Failure to collect any routine monitoring samples in 12/2005.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)

Description: Failure to post a PN for not collecting any routine monitoring samples in 12/2005.

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	
TIM O'BRIEN DBA O'BRIEN'S	§	**TEXAS COMMISSION ON**
RESTAURANT	§	
RN104189303	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-0049-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 Tim O'Brien dba O'Brien's Restaurant ("Mr. O'Brien") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. O'Brien appear before the Commission and together stipulate that:

1. Mr. O'Brien owns and operates a restaurant with a public water supply at 848 State Highway 46 East in Bergheim, Kendall County, Texas (the "Facility") that has one service connection and serves at least 25 people per day for at least 60 days per year.

2. The Commission and Mr. O'Brien agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. O'Brien is subject to the Commission's jurisdiction.

3. Mr. O'Brien received notice of the violations alleged in Section II ("Allegations") on or about December 23, 2006.

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

5. An administrative penalty in the amount of Seven Hundred Twenty-Six Dollars ($726) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. O'Brien has paid Five Hundred Eighty-One Dollars ($581) of the administrative penalty and One Hundred Forty-Five Dollars ($145) is deferred contingent upon Mr. O'Brien'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 Mr. O'Brien fails to timely

and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. O'Brien 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 Mr. O'Brien have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

8. The Executive Director recognizes that, on December 29, 2006, as-built plans and specifications for the Facility, prepared by a licensed, professional engineer, were received by the TCEQ San Antonio Regional Office.

9. 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 Mr. O'Brien has not complied with one or more of the terms or conditions in this Agreed Order.

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, Mr. O'Brien is alleged to have failed to submit water system plans and specifications prepared by a licensed, professional engineer to the Commission for review and approval, in violation of 30 TEX. ADMIN. CODE §§ 290.39(h)(1) and 290.46(a), as documented during an investigation conducted on October 31, 2006.

III. DENIALS

Mr. O'Brien generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. O'Brien pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and Mr. O'Brien'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: Tim O'Brien dba O'Brien's Restaurant, Docket No. 2007-0049-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 Mr. O'Brien shall undertake the following technical requirements:

a. Respond in writing to all Commission requests for additional information concerning the submission and approval of the as-built plans and specifications for the Facility within 30 days of such requests, or by any other deadline specified in writing. A copy of all written responses shall be sent to:

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

b. Within 90 days after the effective date of this Agreed Order, obtain Commission approval of the as-built plans and specifications for the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 290.39 and 290.46; and

c. Within 105 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 2.b. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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 Mr. O'Brien. Mr. O'Brien 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 Mr. O'Brien shall be made in writing to the Executive Director. Extensions are not effective until Mr. O'Brien 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 Mr. O'Brien 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 Mr. O'Brien, or three days after the date on which the Commission mails notice of the Order to Mr. O'Brien, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

5/21/07
~~1/27/07~~
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, if any, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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

Signature

1/27/07
Date

Becky T. O'Brien for
Tim O'Brien
Name (Printed or typed)
Authorized Representative of
Tim O'Brien dba O'Brien's Restaurant

President
Title

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