

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

Page 1 of 2

DOCKET NO.: 2009-1354-PWS-E **TCEQ ID:** RN101260420 **CASE NO.:** 38186**RESPONDENT NAME:** Ni America Texas, LLC

| | | |
|---|---|--|
| ORDER TYPE: | | |
| <input checked="" type="checkbox"/> 1660 AGREED ORDER | <input type="checkbox"/> FINDINGS AGREED ORDER | <input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING |
| <input type="checkbox"/> FINDINGS DEFAULT ORDER | <input type="checkbox"/> SHUTDOWN ORDER | <input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER |
| <input type="checkbox"/> AMENDED ORDER | <input type="checkbox"/> EMERGENCY ORDER | |
| CASE TYPE: | | |
| <input type="checkbox"/> AIR | <input type="checkbox"/> MULTI-MEDIA (check all that apply) | <input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE |
| <input checked="" type="checkbox"/> PUBLIC WATER SUPPLY | <input type="checkbox"/> PETROLEUM STORAGE TANKS | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION |
| <input type="checkbox"/> WATER QUALITY | <input type="checkbox"/> SEWAGE SLUDGE | <input type="checkbox"/> UNDERGROUND INJECTION CONTROL |
| <input type="checkbox"/> MUNICIPAL SOLID WASTE | <input type="checkbox"/> RADIOACTIVE WASTE | <input type="checkbox"/> DRY CLEANER REGISTRATION |
| <p>SITE WHERE VIOLATION(S) OCCURRED: Shaded Lane Estates, located at the intersection of County Road 606 and County Road 529, Johnson County</p> <p>TYPE OF OPERATION: Public water supply</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 28, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Andrea Linson-Mgbeoduru, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-1482; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Craig Sherwood, Managing Operator, Ni America Texas, LLC, 10913 Metronome Drive, Houston, Texas 77043 Mr. Ed Wallace, President, Ni America Texas, LLC, 10913 Metronome Drive, Houston, Texas 77043 Respondent's Attorney: Not represented by counsel on this enforcement matter</p> | | |

| VIOLATION SUMMARY CHART: | | |
|--|--|--|
| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
| <p>Type of Investigation: <input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: June 19, 2009</p> <p>Date of NOV/NOE Relating to this Case: August 7, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>AIR/WATER/WASTE</p> <p>1) Failure to provide two or more service pumps having a total capacity of 2.0 gallons per minute ("gpm") per connection [30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(iii)].</p> <p>2) Failure to provide an elevated storage capacity of 100 gallons per connection [30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(iv)].</p> | <p>Total Assessed: \$660</p> <p>Total Deferred: \$132 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$528</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Within 90 days after the effective date of this Agreed Order, provide two or more service pumps having a total capacity of 2.0 gpm per connection;</p> <p>b. 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 a;</p> <p>c. Within 180 days after the effective date of this Agreed Order, provide an elevated storage tank capacity of 100 gallons per connection; and</p> <p>d. Within 195 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 c.</p> |

Additional ID No(s): PWS ID No. 1260103



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

| | | | | | | |
|--------------|----------|-------------|-----------|-------------|---------|--|
| DATES | Assigned | 10-Aug-2009 | Screening | 17-Aug-2009 | EPA Due | |
| | PCW | 17-Aug-2009 | | | | |

| | |
|--|-----------------------|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | Ni America Texas, LLC |
| Reg. Ent. Ref. No. | RN101260420 |
| Facility/Site Region | 4-Dallas/Fort Worth |
| Major/Minor Source | Minor |

| | | | |
|---------------------------------|---------------------|-----------------------|-------------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 38186 | No. of Violations | 2 |
| Docket No. | 2009-1354-PWS-E | Order Type | 1660 |
| Media Program(s) | Public Water Supply | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Andrea Linson-Mgbeoduru |
| | | EC's Team | Enforcement Team 2 |
| Admin. Penalty \$ Limit Minimum | \$50 | Maximum | \$1,000 |

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1: \$550

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 20.0% Enhancement Subtotals 2, 3, & 7: \$110

Notes: Enhancement is due to one prior final agreed order containing a denial of liability.

Culpability No 0.0% Enhancement Subtotal 4: \$0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments Subtotal 5: \$0

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

| | |
|----------------------------|----------|
| Total EB Amounts | \$2,499 |
| Approx. Cost of Compliance | \$29,990 |

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 Final Subtotal: \$660

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$660

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty: \$660

DEFERRAL 20.0% Reduction Adjustment: -\$132

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY \$528

Screening Date 17-Aug-2009

Docket No. 2009-1354-PWS-E

PCW

Respondent NI America Texas, LLC

Policy Revision 2 (September 2002)

Case ID No. 38186

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101260420

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson-Mgbeoduru

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 | 0 | 0% |
| 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) 20%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement is due to one prior final agreed order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 20%

| | | | | |
|--|-------------------------------------|--|--|---|
| Screening Date 17-Aug-2009 | | Docket No. 2009-1354-PWS-E | | PCW |
| Respondent Ni America Texas, LLC | | | | <small>Policy Revision 2 (September 2002)</small> |
| Case ID No. 38186 | | | | <small>PCW Revision October 30, 2008</small> |
| Reg. Ent. Reference No. RN101260420 | | | | |
| Media [Statute] Public Water Supply | | | | |
| Enf. Coordinator Andrea Linson-Mgbeoduru | | | | |
| Violation Number | | <input type="text" value="1"/> | | |
| Rule Cite(s) | | <input type="text" value="30 Tex. Admin. Code § 290.45(b)(1)(C)(iii)"/> | | |
| Violation Description | | <input 200="" 220="" 400="" 440="" 9%="" a="" at="" connection.="" connections="" currently,="" deficiency."="" documented="" facility="" gpm="" gpm")="" gpm,="" gpm.="" has="" indicates="" investigation,="" it="" of="" operates="" per="" producing="" pumps="" require="" service="" specifically,="" that="" the="" time="" total="" two="" type="text" value="Failed to provide two or more service pumps having a total capacity of 2.0 gallons per minute (" was="" which=""/> | | |
| Base Penalty | | | | <input type="text" value="\$1,000"/> |
| >> Environmental, Property and Human Health Matrix | | | | |
| OR | Harm | | | |
| | Release | Major | Moderate | Minor |
| | Actual | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| | Potential | <input type="text"/> | <input type="text"/> | <input checked="" type="checkbox"/> |
| | | | | Percent <input type="text" value="5%"/> |
| >> Programmatic Matrix | | | | |
| | Falsification | Major | Moderate | Minor |
| | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text"/> |
| | | | | Percent <input type="text" value="0%"/> |
| Matrix Notes | | <input type="text" value="Failure to provide a minimum service pump capacity of 2.0 gpm per connection could expose customers to an insignificant amount of contaminants which would not exceed levels that are protective of human health."/> | | |
| Adjustment | | | | <input type="text" value="\$950"/> |
| | | | | <input type="text" value="\$50"/> |
| Violation Events | | | | |
| Number of Violation Events | | <input type="text" value="1"/> | <input type="text" value="59"/> | Number of violation days |
| <small>mark only one with an x</small> | daily | <input type="text"/> | | |
| | weekly | <input type="text"/> | | |
| | monthly | <input type="text"/> | | |
| | quarterly | <input type="text"/> | | |
| | semiannual | <input type="text"/> | | |
| | annual | <input type="text"/> | | |
| | single event | <input checked="" type="checkbox"/> | | |
| | | | | Violation Base Penalty <input type="text" value="\$50"/> |
| <input type="text" value="One single event is recommended."/> | | | | |
| Good Faith Efforts to Comply | | <input right;"="" text-align:="" type="text" value="0.0% Reduction</input></td> <td style="/> <input type="text" value="\$0"/> | | |
| | | <small>Before NOV</small> | <small>NOV to EDRP/Settlement Offer</small> | |
| Extraordinary | <input type="text"/> | <input type="text"/> | <input type="text"/> | |
| Ordinary | <input type="text"/> | <input type="text"/> | <input type="text"/> | |
| N/A | <input checked="" type="checkbox"/> | <small>(mark with x)</small> | | |
| Notes | | <input type="text" value="The Respondent does not meet the good faith criteria for this violation."/> | | |
| Violation Subtotal | | | | <input type="text" value="\$50"/> |
| Economic Benefit (EB) for this violation | | Statutory Limit Test | | |
| Estimated EB Amount | | <input type="text" value="\$53"/> | Violation Final Penalty Total <input type="text" value="\$60"/> | |
| This violation Final Assessed Penalty (adjusted for limits) | | | | <input type="text" value="\$60"/> |

Economic Benefit Worksheet

Respondent Ni America Texas, LLC
Case ID No. 38186
Reg. Ent. Reference No. RN101260420
Media Public Water Supply
Violation No. 1

| | |
|-------------------------|------------------------------|
| Percent Interest | Years of Depreciation |
| 5.0 | 15 |

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

Delayed Costs

| Equipment | | | 0.00 | \$0 | \$0 | \$0 | \$0 |
|--------------------------|-------|-------------|-------------|------|-----|------|------|
| Buildings | | | 0.00 | \$0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | 0.00 | \$0 | \$0 | \$0 | \$0 |
| Engineering/construction | \$870 | 19-Jun-2009 | 30-Apr-2010 | 0.86 | \$3 | \$50 | \$53 |
| Land | | | 0.00 | \$0 | n/a | \$0 | \$0 |
| Record Keeping System | | | 0.00 | \$0 | n/a | \$0 | \$0 |
| Training/Sampling | | | 0.00 | \$0 | n/a | \$0 | \$0 |
| Remediation/Disposal | | | 0.00 | \$0 | n/a | \$0 | \$0 |
| Permit Costs | | | 0.00 | \$0 | n/a | \$0 | \$0 |
| Other (as needed) | | | 0.00 | \$0 | n/a | \$0 | \$0 |

Notes for DELAYED costs
 The delayed cost includes the estimated amount necessary to provide two or more service pumps having a total capacity of 2.0 gpm per connection. The date required is the investigation date. The final date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

| Disposal | | | 0.00 | \$0 | \$0 | \$0 | \$0 |
|-------------------------------|--|--|------|-----|-----|-----|-----|
| Personnel | | | 0.00 | \$0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | 0.00 | \$0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | 0.00 | \$0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | 0.00 | \$0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | 0.00 | \$0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | 0.00 | \$0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

Approx. Cost of Compliance \$870

TOTAL \$53

| Screening Date 17-Aug-2009 | Docket No. 2009-1354-PWS-E | | | | | | | | | | | | | | | | | | | |
|--|---|-------------------------------|-------------------------------|--------------------|---------|---|----------------|-------|------------|-------|-------------------|---------------|---------------|--|-------------------------------------|--------------------|-----------|---|--|--|
| Respondent Ni America Texas, LLC | PCW <small>Policy Revision 2 (September 2007) PCW Revision October 30, 2008</small> | | | | | | | | | | | | | | | | | | | |
| Case ID No. 38186 | | | | | | | | | | | | | | | | | | | | |
| Reg. Ent. Reference No. RN101260420 | | | | | | | | | | | | | | | | | | | | |
| Media [Statute] Public Water Supply | | | | | | | | | | | | | | | | | | | | |
| Enf. Coordinator Andrea Linson-Mgbeoduru | | | | | | | | | | | | | | | | | | | | |
| Violation Number 2 | | | | | | | | | | | | | | | | | | | | |
| Rule Cite(s) | 30 Tex. Admin. Code § 290.45(b)(1)(C)(iv) | | | | | | | | | | | | | | | | | | | |
| Violation Description | Failed to provide an elevated storage capacity of 100 gallons per connection. Specifically, at the time of the investigation, it was documented the Facility has 220 service connections which require a minimum elevated storage capacity of 22,000 gallons. Currently, the Facility has a 8,456 gallon elevated storage tank, which indicates a 62% deficiency. | | | | | | | | | | | | | | | | | | | |
| Base Penalty | \$1,000 | | | | | | | | | | | | | | | | | | | |
| >> Environmental, Property and Human Health Matrix | | | | | | | | | | | | | | | | | | | | |
| OR | <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th colspan="3">Harm</th> <td></td> </tr> <tr> <td>Release</td> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td>Actual</td> <td></td> <td></td> <td></td> <td rowspan="2" style="text-align: right;">Percent 25%</td> </tr> <tr> <td>Potential</td> <td style="text-align: center;">x</td> <td></td> <td></td> </tr> </table> | | Harm | | | | Release | Major | Moderate | Minor | | Actual | | | | Percent 25% | Potential | x | | |
| | | Harm | | | | | | | | | | | | | | | | | | |
| Release | Major | Moderate | Minor | | | | | | | | | | | | | | | | | |
| Actual | | | | Percent 25% | | | | | | | | | | | | | | | | |
| Potential | x | | | | | | | | | | | | | | | | | | | |
| >> Programmatic Matrix | | | | | | | | | | | | | | | | | | | | |
| Matrix Notes | <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th>Major</th> <th>Moderate</th> <th>Minor</th> <td></td> </tr> <tr> <td>Falsification</td> <td></td> <td></td> <td></td> <td style="text-align: right;">Percent 0%</td> </tr> </table> | | Major | Moderate | Minor | | Falsification | | | | Percent 0% | | | | | | | | | |
| | | Major | Moderate | Minor | | | | | | | | | | | | | | | | |
| Falsification | | | | Percent 0% | | | | | | | | | | | | | | | | |
| <div style="border: 1px solid black; padding: 5px; margin: 5px auto; width: 80%;"> Failing to provide the minimum elevated storage capacity could result in low pressure and water outages exposing customers to a significant amount of contaminants which would exceed levels that are protective of human health. </div> | | | | | | | | | | | | | | | | | | | | |
| Adjustment | \$750 | | | | | | | | | | | | | | | | | | | |
| \$250 | | | | | | | | | | | | | | | | | | | | |
| Violation Events | | | | | | | | | | | | | | | | | | | | |
| Number of Violation Events | 2 | | | | | | | | | | | | | | | | | | | |
| Number of violation days | 59 | | | | | | | | | | | | | | | | | | | |
| mark only one with an x <table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td>daily</td><td></td></tr> <tr><td>weekly</td><td></td></tr> <tr><td>monthly</td><td style="text-align: center;">x</td></tr> <tr><td>quarterly</td><td></td></tr> <tr><td>semiannual</td><td></td></tr> <tr><td>annual</td><td></td></tr> <tr><td>single events</td><td></td></tr> </table> | daily | | weekly | | monthly | x | quarterly | | semiannual | | annual | | single events | | Violation Base Penalty \$500 | | | | | |
| daily | | | | | | | | | | | | | | | | | | | | |
| weekly | | | | | | | | | | | | | | | | | | | | |
| monthly | x | | | | | | | | | | | | | | | | | | | |
| quarterly | | | | | | | | | | | | | | | | | | | | |
| semiannual | | | | | | | | | | | | | | | | | | | | |
| annual | | | | | | | | | | | | | | | | | | | | |
| single events | | | | | | | | | | | | | | | | | | | | |
| <div style="border: 1px solid black; padding: 5px; margin: 5px auto; width: 80%;"> Two monthly events are recommended, calculated from the investigation date, June 19, 2009, to the screening date, August 17, 2009. </div> | | | | | | | | | | | | | | | | | | | | |
| Good Faith Efforts to Comply | | | | | | | | | | | | | | | | | | | | |
| 0.0% Reduction | \$0 | | | | | | | | | | | | | | | | | | | |
| <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td></td> <th>Before NOV</th> <th>NOV to EDRP/ Settlement Offer</th> </tr> <tr> <td>Extraordinary</td> <td></td> <td></td> </tr> <tr> <td>Ordinary</td> <td></td> <td></td> </tr> <tr> <td>N/A</td> <td style="text-align: center;">x</td> <td style="text-align: center;">(mark with x)</td> </tr> </table> | | Before NOV | NOV to EDRP/ Settlement Offer | Extraordinary | | | Ordinary | | | N/A | x | (mark with x) | | | | | | | | |
| | Before NOV | NOV to EDRP/ Settlement Offer | | | | | | | | | | | | | | | | | | |
| Extraordinary | | | | | | | | | | | | | | | | | | | | |
| Ordinary | | | | | | | | | | | | | | | | | | | | |
| N/A | x | (mark with x) | | | | | | | | | | | | | | | | | | |
| Notes | <div style="border: 1px solid black; padding: 5px; margin: 5px auto; width: 80%;"> The Respondent does not meet the good faith criteria for this violation. </div> | | | | | | | | | | | | | | | | | | | |
| Violation Subtotal | \$500 | | | | | | | | | | | | | | | | | | | |
| Economic Benefit (EB) for this violation | | | | | | | | | | | | | | | | | | | | |
| Estimated EB Amount | \$2,446 | | | | | | | | | | | | | | | | | | | |
| Statutory Limit Test | | | | | | | | | | | | | | | | | | | | |
| Violation Final Penalty Total | \$600 | | | | | | | | | | | | | | | | | | | |
| This violation Final Assessed Penalty (adjusted for limits) \$600 | | | | | | | | | | | | | | | | | | | | |

Economic Benefit Worksheet

Respondent Ni America Texas, LLC
Case ID No. 38188
Reg. Ent. Reference No. RN101260420
Media Public Water Supply
Violation No. 2

| | |
|-------------------------|------------------------------|
| Percent Interest | Years of Depreciation |
| 5.0 | 15 |

| | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--|-----------|---------------|------------|-----|----------------|---------------|-----------|
|--|-----------|---------------|------------|-----|----------------|---------------|-----------|

Item Description: No commas or \$

Delayed Costs

| | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------|-----------|---------------|-------------|------|----------------|---------------|-----------|
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/construction | \$29,120 | 19-Jun-2009 | 31-Aug-2010 | 1.20 | \$116 | \$2,330 | \$2,446 |
| Land | | | | 0.00 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.00 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.00 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.00 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs: The delayed cost includes the estimated amount necessary to provide an elevated storage capacity of 100 gallons per connection (calculated at \$2.15 x 13,544 gallons deficiency). The date required is the investigation date. The final date is the estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

| | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|-------------------------------|-----------|---------------|------------|------|----------------|---------------|-----------|
| Disposal | | | | 0.00 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.00 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.00 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.00 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

| | | | |
|----------------------------|----------|--------------|---------|
| Approx. Cost of Compliance | \$29,120 | TOTAL | \$2,446 |
|----------------------------|----------|--------------|---------|

Compliance History Report

Customer/Respondent/Owner-Operator: CN603329970 Ni America Texas, LLC Classification: AVERAGE Rating: 3.01
Regulated Entity: RN101260420 SHADED LANE ESTATES Classification: Site Rating:
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1260103
WATER LICENSING LICENSE 1260103
Location: INTERSECTION OF COUNTY ROAD 606 AND COUNTY ROAD 529, JOHNSON COUNTY, TX
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: August 19, 2009
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: September 17, 2004 to September 17, 2009
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Andrea Linson-Mgbeoduru Phone: 512-239-1482

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? Ni America Texas, LLC
4. If Yes, who was/were the prior owner(s)/operator(s)? Hickman Development Corp.
5. When did the change(s) in owner or operator occur? 11/2007

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: 10/25/2007

ADMINORDER 2007-0351-PWS-E

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(C)(i)

5A THC Chapter 341, SubChapter A 341.0315(c)

Description: Failed to provide a well capacity of 0.6 gallons per minute ("gpm") per connection

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(5)

Description: Failed to locate inlet connections on the ground storage tank so as to prevent short-circuiting or stagnation of water

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(C)(iii)

5A THC Chapter 341, SubChapter A 341.0315(c)

Description: Failed to provide two or more pumps having a total capacity of 2.0 gpm per connection at each pump station or pressure plane

- 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.)

N/A

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

N/A

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
NI AMERICA TEXAS, LLC
RN101260420**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-1354-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 Ni America Texas, LLC ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a public water supply at the intersection of County Road 606 and County Road 529 in Johnson County, Texas (the "Facility") that has approximately 220 service connections and serves at least 25 people per day for at least 60 days per year.
2. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
3. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about August 12, 2009.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of Six Hundred Sixty Dollars (\$660) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Five Hundred Twenty-Eight Dollars (\$528) of the administrative penalty and One Hundred Thirty-Two Dollars (\$132) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to

- timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
 7. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
 8. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
 9. 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.
 10. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

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

1. Failed to provide two or more service pumps having a total capacity of 2.0 gallons per minute ("gpm") per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(iii), as documented during an investigation conducted on June 19, 2009.
2. Failed to provide an elevated storage capacity of 100 gallons per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(C)(iv), as documented during an investigation conducted on June 19, 2009.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Ni America Texas, LLC, Docket No. 2009-1354-PWS-E" to:

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

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 90 days after the effective date of this Agreed Order, provide two or more service pumps having a total capacity of 2.0 gpm per connection, in accordance with 30 TEX. ADMIN. CODE § 290.45;
 - b. Within 105 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.d below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a;
 - c. Within 180 days after the effective date of this Agreed Order, provide an elevated storage tank capacity of 100 gallons per connection, in accordance with 30 TEX. ADMIN. CODE § 290.45; and
 - d. Within 195 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.c. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

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

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
6. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
7. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Ni America Texas, LLC
DOCKET NO. 2009-1354-PWS-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Szalun
For the Executive Director

3/9/2010
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

Ed Wallace
Signature

2/8/2010
Date

Ed Wallace
Name (Printed or typed)
Authorized Representative of
Ni America Texas, LLC

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.

