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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2010-0861-PWS-E **TCEQ ID:** RN101175115 **CASE NO.:** 39714
RESPONDENT NAME: Huber Garden, Inc. dba Huber Garden Estates

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: Huber Garden Estates, 718 West Yukon Road, near Odessa, Ector 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 September 6, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Amanda Henry, Enforcement Division, Enforcement Team 2, MC R-12, (713) 767-3672; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Brent Huber, Owner/Operator, Huber Garden Estates, P.O. Box 2269, Odessa, Texas 79760 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: February 25, 2010</p> <p>Date of NOV/NOE Relating to this Case: April 22, 2010 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>1) Failure to provide a total storage capacity of 200 gallons per connection [30 TEX. ADMIN. CODE § 290.45(b)(1)(F)(ii) and TEX. HEALTH & SAFETY CODE § 341.0315(c)].</p> <p>2) Failure to provide a total service pump capacity of 2.0 gallons per minute ("gpm") [30 TEX. ADMIN. CODE § 290.45(b)(1)(F)(iii)].</p>	<p>Total Assessed: \$1,144</p> <p>Total Deferred: \$228 <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: \$916</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 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 180 days after the effective date of this Agreed Order:</p> <p>i. Provide a total service pump capacity of 2.0 gpm per connection; and</p> <p>ii. Provide a total storage capacity of 200 gallons per connection.</p> <p>b. 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 a.</p>

Additional ID No(s): 0680163



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ
DATES

Assigned PCW	3-May-2010	Screening	18-May-2010	EPA Due	
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RESPONDENT/FACILITY INFORMATION

Respondent	Huber Garden, Inc. dba Huber Garden Estates		
Reg. Ent. Ref. No.	RN101175115		
Facility/Site Region	7-Midland	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	39714	No. of Violations	2
Docket No.	2010-0861-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Amanda Henry
		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**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes:

Culpability Enhancement **Subtotal 4**

Notes:

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts	\$3,735	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$39,760	

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes:

PAYABLE PENALTY

Screening Date 18-May-2010

Docket No. 2010-0861-PWS-E

PCW

Respondent Huber Garden, Inc. dba Huber Garden Estates

Policy Revision 2 (September 2002)

Case ID No. 39714

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101175115

Media [Statute] Public Water Supply

Enf. Coordinator Amanda Henry

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)	2	10%
	Other written NOVs	4	8%
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	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgements or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 43%

>> 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 penalty enhancement is due to two prior Notices of Violation ("NOVs") containing violations that are the same as the violations in the current enforcement action and four prior dissimilar NOVs and one Agreed Order that does not contain a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 43%

Screening Date 18-May-2010

Docket No. 2010-0861-PWS-E

PCW

Respondent Huber Garden, Inc. dba Huber Garden Estates

Policy Revision 2 (September 2002)

Case ID No. 39714

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101175115

Media [Statute] Public Water Supply

Enf. Coordinator Amanda Henry

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.45(b)(1)(F)(ii) and Tex. Health & Safety Code § 341.0315(c)

Violation Description Failed to provide a total storage capacity of 200 gallons per connection. Specifically, at the time of the investigation, it was documented that the Facility should be providing a total storage capacity of 13,400 gallons with 67 connections. The Facility is currently providing a total storage capacity of 5,000 gallons, which is a 63% deficiency.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Without adequate storage capacity, customers of the Facility could experience water shortages and outages exposing customers to a significant amount of contaminants that would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 3 Number of violation days 82

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$750

Three monthly events are recommended, calculated from the investigation date of February 25, 2010, to the screening date of May 18, 2010.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDPRP/Settlement \$0

Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Estimated EB Amount \$3,031

Statutory Limit Test

Violation Final Penalty Total \$1,073

This violation Final Assessed Penalty (adjusted for limits) \$1,073

Economic Benefit Worksheet

Respondent Huber Garden, Inc. dba Huber Garden Estates
Case ID No. 39714
Reg. Ent. Reference No. RN101175115
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
Delayed Costs							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$32,250	25-Feb-2010	30-Jun-2011	1.34	\$144	\$2,886	\$3,031
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

Estimated cost to provide adequate storage tank capacity. Date required is the investigation date documenting the violation. 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
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

\$32,250

TOTAL

\$3,031

Screening Date 18-May-2010

Docket No. 2010-0861-PWS-E

PCW

Respondent Huber Garden, Inc. dba Huber Garden Estates

Policy Revision 2 (September 2002)

Case ID No. 39714

PCW Revision October 30, 2009

Reg. Ent. Reference No. RN101175115

Media [Statute] Public Water Supply

Enf. Coordinator Amanda Henry

Violation Number 2

Rule Cite(s)

30 Tex Admin. Code § 290.45(b)(1)(F)(iii)

Violation Description

Failed to provide a total service pump capacity of 2.0 gpm. Specifically, at the time of the investigation, it was documented that the Facility had 67 connections and is required to provide a total service pump capacity of 134 gpm. However, the Facility is currently providing 125 gpm of service pump capacity, which is a 7% deficiency.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					5%
Potential				x	

>> Programmatic Matrix

	Major	Moderate	Minor	Percent
Falsification				0%

Matrix Notes

Failing to provide adequate service pump capacity, may not allow the Facility to supply water to sections of the distribution system where it is not possible to supply it by gravity; thereby, exposing customers of the Facility to an insignificant amount of contaminants that would not exceed levels protective of human health.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 1 Number of violation days 82

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$50

One single event is recommended.

Good Faith Efforts to Comply

	0.0% Reduction	
	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

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

Violation Subtotal \$50

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$705

Violation Final Penalty Total \$72

This violation Final Assessed Penalty (adjusted for limits) \$72

Economic Benefit Worksheet

Respondent Huber Garden, Inc. dba Huber Garden Estates
Case ID No. 39714
Reg. Ent. Reference No. RN101175115
Media Public Water Supply
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment	\$7,500	25-Feb-2010	30-Jun-2011	1.34	\$34	\$671	\$705
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				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

Estimated cost to provide an additional service pump. Date required is the investigation date. 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
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 \$7,500

TOTAL \$705

Compliance History Report

Customer/Respondent/Owner-Operator: CN603480799 Huber Garden, Inc. Classification: Rating:
Regulated Entity: RN101175115 HUBER GARDEN ESTATES Classification: Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0680163
Location: 718 W YUKON RD, NEAR ODESSA, ECTOR COUNTY, TX

TCEQ Region: REGION 07 - MIDLAND

Date Compliance History Prepared: May 18, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: May 18, 2005 to May 18, 2010

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

Name: Amanda Henry Phone: 713-767-3672

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? Hubner Garden, Inc.
4. If Yes, who was/were the prior owner(s)/operator(s) ? Stanley Huber
5. When did the change(s) in owner or operator occur? June 27, 2007

Components (Multimedia) for the Site :

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

Effective Date: 02/18/2007

ADMINORDER 2006-0879-PWS-E

Classification: Moderate

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

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

Description: Failure to collect any routine monitoring samples in 03/2005.

Classification: Moderate

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

Description: Failure to post a PN for not collecting any routine monitoring samples in 03/2005.

Classification: Moderate

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

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

Description: Failure to collect any routine monitoring samples in 05/2005.

Classification: Moderate

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

Description: Failure to post a PN for not collecting any routine monitoring samples in 05/2005.

Classification: Moderate

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

Description: Failure to collect any routine monitoring samples in 10/2005.

Classification: Moderate

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

Description: Failure to post a PN for not collecting any routine monitoring samples in 10/2005.

Classification: Moderate

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

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

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

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
Description: Failure to post a PN for not collecting any routine monitoring samples in 12/2005.
Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(II)
Description: Failure to collect any repeat samples in 08/2003 following a coliform found result.

Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
Description: Failure to post a PN for not collecting any repeat samples in 08/2003 following a coliform found result.

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	06/27/2005	(481843)
2	12/01/2005	(481884)
3	01/25/2006	(481895)
4	06/08/2006	(462866)
5	06/16/2006	(481898)
6	08/15/2007	(645555)
7	11/12/2007	(600941)
8	08/14/2008	(687996)
9	04/26/2010	(798715)

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

Date: 06/27/2005 (481843) CN603480799
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)
5A THC Chapter 341, SubChapter A 341.033(d)
Description: Failure to collect any routine monitoring samples in 05/2005.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A)
Description: Failure to post a PN for not collecting any routine monitoring samples in 05/2005.

Date: 12/01/2005 (481884) CN603480799
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(ii)
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)(A)
Description: Failure to post a PN for not collecting any routine monitoring samples in 10/2005.

Date: 01/25/2006 (481895) CN603480799
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(II)
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)(A)
Description: Failure to post a PN for not collecting any routine monitoring samples in 12/2005.

Date: 06/08/2006 (462866) CN603480799
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(F)(iv)
Description: Failure to meet this Agency's "Minimum Water System Capacity Requirements"

regarding pressure tank capacity of 20 gallons per connection.

Date: 08/15/2007 (645555) CN603480799
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(4)
Description: BACT - MONITORING/REPORTING VIOLATIONS

Date: 11/13/2007 (600941) CN603480799
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.45(b)(1)(F)(iv)
Description: Failure to meet this Agency's "Minimum Water System Capacity Requirements"
regarding pressure tank capacity of 20 gallons per connection.

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
HUBER GARDEN, INC. DBA HUBER
GARDEN ESTATES
RN101175115**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2010-0861-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 Huber Garden, Inc. dba Huber Garden Estates ("the Respondent") under the authority of 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 718 West Yukon Road near Odessa, Ector County, Texas (the "Facility") that has approximately 67 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 April 27, 2010.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of One Thousand One Hundred Forty-Four Dollars (\$1,144) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Nine Hundred Sixteen Dollars (\$916) of the administrative penalty and Two Hundred Twenty-Eight Dollars (\$228) 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 a total storage capacity of 200 gallons per connection, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(F)(ii) and TEX. HEALTH & SAFETY CODE § 341.0315(c), as documented during an investigation conducted on February 25, 2010.
2. Failed to provide a total service pump capacity of 2.0 gpm, in violation of 30 TEX. ADMIN. CODE § 290.45(b)(1)(F)(iii), as documented during an investigation conducted on February 25, 2010.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Huber Garden, Inc. dba Huber Garden Estates, Docket No. 2010-0861-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 180 days after the effective date of this Agreed Order:
 - i. Provide a total service pump capacity of 2.0 gpm per connection, in accordance with 30 TEX. ADMIN. CODE § 290.45; and
 - ii. Provide a total storage capacity of 200 gallons per connection, in accordance with 30 TEX. ADMIN. CODE § 290.45.
- b. 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 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 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 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
Midland Regional Office
Texas Commission on Environmental Quality
3300 North A Street, Building 4, Suite 107
Midland, Texas 79705-5404

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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Szolner
For the Executive Director

8/13/2010
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.

Brent Huber
Signature

7-9-2010
Date

BRENT HUBER
Name (Printed or typed)
Authorized Representative of
Huber Garden, Inc. dba Huber Garden Estates

OWNER / OPERATOR
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 I of this Agreed Order.

