

Executive Summary – Enforcement Matter – Case No. 41215
Sand Hill Panola SWD #5 LLC
RN105906119
Docket No. 2011-0306-AIR-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

AIR

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Sand Hill Panola SWD No. 5, 7717 Farm-to-Market Road 31 South, Carthage, Panola County

Type of Operation:

Salt water disposal plant

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

Texas Register Publication Date: June 10, 2011

Comments Received: No

Penalty Information

Total Penalty Assessed: \$4,806

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$961

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$0

Payment Plan: N/A

On or about May 25, 2010, the Respondent filed a petition for bankruptcy relief pursuant to Chapter 11 of the United States Code.

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Average

Site/RN - Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41215
Sand Hill Panola SWD #5 LLC
RN105906119
Docket No. 2011-0306-AIR-E

Investigation Information

Complaint Date(s): October 8, 2010

Complaint Information: A complaint was received alleging foul odors from the Respondent's property.

Date(s) of Investigation: December 2, 2010

Date(s) of NOE(s): February 11, 2011

Violation Information

Failed to obtain permit authorization for a source of air emissions or satisfy the conditions of a Permit By Rule prior to the commencement of operations of a facility which emits air contaminants. Specifically, the Plant processes salt water which emits a sour gas and does not meet the distance requirement of one quarter mile from the nearest occupied residence as required by Permit By Rule 30 TEX. ADMIN. CODE § 106.351 [30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.085(b) and 382.0518(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that on April 13, 2011, ownership of the Plant was transferred to Heckmann Water Resources Corporation.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: N/A

Date Answer(s) Filed: N/A

SOAH Referral Date: N/A

Hearing Date(s): N/A

Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: James Nolan, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-6634; Debra Barber, Enforcement Division, MC 219, (512) 239-0412

TCEQ SEP Coordinator: N/A

Respondent: Larry Joe Eaves, Vice President, Sand Hill Panola SWD #5 LLC, P.O. Box 1661, Center, Texas 75935

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	14-Feb-2011	Screening	22-Feb-2011	EPA Due	
	PCW	14-Apr-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	Sand Hill Panola SWD #5 LLC		
Reg. Ent. Ref. No.	RN105906119		
Facility/Site Region	5-Tyler	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	41215	No. of Violations	1
Docket No.	2011-0306-AIR-E	Order Type	1660
Media Program(s)	Air	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	James Nolan
		EC's Team	Enforcement Team 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$3,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **7.0%** Enhancement **Subtotals 2, 3, & 7** **\$210**

Notes: Enhancement for one NOV with same/similar violations and one NOV with dissimilar violations.

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: \$1,596
Approx. Cost of Compliance: \$1,500
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$3,210**

OTHER FACTORS AS JUSTICE MAY REQUIRE **49.7%** **Adjustment** **\$1,596**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided costs of compliance associated with the violation.

Final Penalty Amount **\$4,806**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$4,806**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$961**

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 **\$3,845**

Screening Date 22-Feb-2011

Docket No. 2011-0306-AIR-E

PCW

Respondent Sand Hill Panola SWD #5 LLC

Policy Revision 2 (September 2002)

Case ID No. 41215

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105906119

Media [Statute] Air

Enf. Coordinator James Nolan

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<i>number of judgements or consent decrees meeting criteria</i>)	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 (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	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 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	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) 7%

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

No

Adjustment Percentage (Subtotal 3) 0%

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

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one NOV with same/similar violations and one NOV with dissimilar violations.

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

Screening Date 22-Feb-2011

Docket No. 2011-0306-AIR-E

PCW

Respondent Sand Hill Panola SWD #5 LLC

Policy Revision 2 (September 2002)

Case ID No. 41215

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105906119

Media [Statute] Air

Enf. Coordinator James Nolan

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 116.110(a) and Tex. Health & Safety Code §§ 382.085(b) and 382.0518(a)

Violation Description

Failed to obtain permit authorization for a source of air emissions or satisfy the conditions of a Permit By Rule prior to the commencement of operations of a facility which emits air contaminants. Specifically, the Plant processes salt water which emits a sour gas and does not meet the distance requirement of one quarter mile from the nearest occupied residence as required by Permit By Rule 30 Tex. Admin. Code § 106.351.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	
	x			10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violatic 1500

Number of Violation Events 3 Number of violation days 82

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
single event		

Violation Base Penalty \$3,000

Three monthly events are recommended based upon the date of investigation (December 2, 2010) through the date of case screening (February 22, 2011).

Good Faith Efforts to Comply

0.0% Reduction

\$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 for this violation.

Violation Subtotal \$3,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1,596

Violation Final Penalty Total \$4,806

This violation Final Assessed Penalty (adjusted for limits) \$4,806

Economic Benefit Worksheet

Respondent Sand Hill Panola SWD #5 LLC
Case ID No. 41215
Reg. Ent. Reference No. RN105906119
Media Air
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				0.00	\$0	\$0	\$0
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

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)	\$1,500	2-Dec-2010	13-Apr-2011	1.28	\$96	\$1,500	\$1,596

Notes for AVOIDED costs

Estimated costs to implement measures and procedures to prevent salt water that contains sour gas from being accepted for disposal at the Plant in order to comply with the conditions for the Permit By Rule. The date required is the date of investigation and the final date is the date of ownership transfer.

Approx. Cost of Compliance \$1,500

TOTAL \$1,596

Compliance History

Customer/Respondent/Owner-Operator:	CN603674896 Sand Hill Panola SWD #5 LLC	Classification: AVERAGE	Rating: 6.00
Regulated Entity:	RN105906119 SAND HILL PANOLA SWD NO 5	Classification: AVERAGE	Site Rating: 6.00
ID Number(s):	AIR NEW SOURCE PERMITS	REGISTRATION	92559
Location:	7717 FM 31 SOUTH, CARTHAGE, TX, 75633		
TCEQ Region:	REGION 05 - TYLER		
Date Compliance History Prepared:	February 24, 2011		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	February 22, 2006 to February 22, 2011		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	James Nolan	Phone:	(512) 239-6634

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, 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	10/13/2010	(865369)
2	11/18/2010	(873021)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 04/20/2010 (798784)	
Self	NO Classification: Major
Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)	
5C THSC Chapter 382 382.0518(a)	
5C THSC Chapter 382 382.085(b)	
Description: Failure to obtain authorization prior to operating the Longbranch Salt Water Disposal (SWD) well located at 7717 FM 31 South, Carthage, Panola County, Texas.	
Date: 06/09/2010 (802898)	
Self	NO Classification: Moderate
Citation: 30 TAC Chapter 101, SubChapter A 101.4	
5C THSC Chapter 382 382.085(a)	
5C THSC Chapter 382 382.085(b)	
Description: Failure to prohibit discharge of air contaminants in such concentration and of such duration as to interfere with the normal use and enjoyment of property.	
- 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
SAND HILL PANOLA SWD #5
LLC
RN105906119**

§
§
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§
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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2011-0306-AIR-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 Sand Hill Panola SWD #5 LLC ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 382 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owned and operated a salt water disposal plant at 7717 Farm-to-Market Road 31 South in Carthage, Panola County, Texas (the "Plant").
2. The Plant consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. 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.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about February 16, 2011.
5. 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.
6. An administrative penalty in the amount of Four Thousand Eight Hundred Six Dollars (\$4,806) is assessed by the Commission in settlement of the violations alleged in Section

II ("Allegations"). On or about May 25, 2010, the Respondent filed a petition for bankruptcy relief pursuant to Chapter 11 of the United States Code. The Automatic Stay imposed by the Bankruptcy Code (specifically, 11 USC § 362(a)) does not apply to the commencement or continuation of an action or proceeding by a governmental unit to enforce such governmental unit's police or regulatory power, by virtue of the exception set out at 11 USC § 362(b)(4). Accordingly, TCEQ [a governmental unit as defined under 11 USC § 101(27)] is expressly excepted from the automatic stay in pursuing enforcement of the State's environmental protection laws, and in seeking to liquidate its damages for such violations. So long as the Debtor's bankruptcy proceedings are pending and/or until relief from the automatic stay is granted, the TCEQ will, however, not seek to execute upon any monetary judgment obtained without first approaching the United States Bankruptcy Court where the Debtor's bankruptcy case is pending as necessary. Nine Hundred Sixty-One Dollars (\$961) 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 assess all or part of the deferred penalty.

7. 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.
8. 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.
9. The Executive Director recognizes that on April 13, 2011, ownership of the Plant was transferred to Heckmann Water Resources Corporation.
10. 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.
11. 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.
12. 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 Plant, the Respondent is alleged to have failed to obtain permit authorization for a source of air emissions or satisfy the conditions of a Permit By Rule prior to the commencement of operations of a facility which emits air contaminants, in violation of 30 TEX. ADMIN. CODE § 116.110(a) and TEX. HEALTH & SAFETY CODE §§ 382.085(b) and 382.0518(a), as documented during an investigation conducted on December 2, 2010. Specifically, the Plant processes salt water which emits a sour gas and does not meet the distance requirement of one quarter mile from the nearest occupied residence as required by Permit By Rule 30 TEX. ADMIN. CODE § 106.351.

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 be assessed an administrative penalty as set forth in Section I, Paragraph 6 above. The assessment 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 may be made payable to "TCEQ" and sent with the notation "Re: Sand Hill Panola SWD #5 LLC, Docket No. 2011-0306-AIR-E" to:

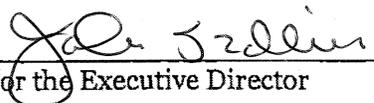
Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent.
3. 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.
4. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
5. 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



For the Executive Director

7/21/2011

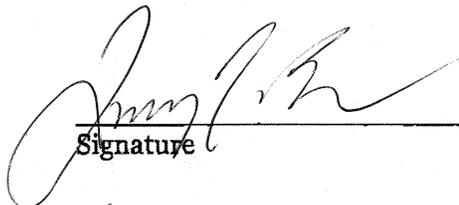
Date

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 is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order 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;
- 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.



Signature

5-4-11

Date

Larry Joe Eaves

Name (Printed or typed)
Authorized Representative of
Sand Hill Panola SWD #5 LLC

V President

Title

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