Executive Summary – Enforcement Matter – Case No. 41689
Brush Country Development Corporation
RN106103765
Docket No. 2011-0796-PWS-E

Order Type:
1660 Agreed Order
Findings Order Justification:
N/A
Media:
PWS
Small Business:
Yes
Location(s) Where Violation(s) Occurred:
US Border Patrol Station Freer, 5087 Texas Highway 44, Duval County
Type of Operation:
Public water supply
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: August 5, 2011
Comments Received: No

Penalty Information

Total Penalty Assessed: $488
Amount Deferred for Expedited Settlement: $97
Amount Deferred for Financial Inability to Pay: $0
Total Paid to General Revenue: $391
Total Due to General Revenue: $0
Payment Plan: N/A
SEP Conditional Offset: $0
Name of SEP: N/A
Compliance History Classifications:
Person/CN - N/A
Site/RN - N/A
Major Source: No
Statutory Limit Adjustment: N/A
Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41689
Brush Country Development Corporation
RN106103765
Docket No. 2011-0796-PWS-E

Investigation Information

Complaint Date(s): February 11, 2011
Complaint Information: Alleged that the Respondent is a public water supply but had not informed the TCEQ.
Date(s) of Investigation: March 2, 2011
Date(s) of NOE(s): May 10, 2011

Violation Information

1. Failed to provide disinfection facilities for microbiological control and distribution protection [30 TEX. ADMIN. CODE § 290.42(b)(1)].

2. Failed to submit engineering plans and specifications and receive written approval prior to beginning construction of a new public water supply system [30 TEX. ADMIN. CODE § 290.39(e)(1), (e)(3) and (h)(1) and TEX. HEALTH & SAFETY CODE § 341.035(c)].

3. Failed to provide an overflow on the Facility's ground storage tank ("GST") that is designed in strict accordance with American Water Works Association ("AWWA") standards [30 TEX. ADMIN. CODE § 290.43(c)(3)].

4. Failed to submit well completion data for review and approval prior to placing a public drinking water well into service [30 TEX. ADMIN. CODE § 290.41(c)(3)(A)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:

a. Installed disinfection equipment to maintain the required disinfection residual on March 31, 2011; and

b. Notified the TCEQ of the start-up of a new public water system on March 2, 2011.

Technical Requirements:

The Order will require the Respondent to:

a. Within 60 days, provide the GST with an overflow that conforms to AWWA design standards with a gravity-hinged and weighted cover that fits tightly with no gap over 1/16 inch and ensure that it is accessible from a ladder or balcony for inspection purposes;

b. Within 75 days, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.;

c. Within 180 days:

i. Submit "as-built" plans, specifications and engineering reports for the Facility. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning "as-built" plans and specifications within 30 days after the date of such requests, or by any other deadline specified in writing; and

ii. Submit well completion data for review and approval.

d. Within 195 days, submit written certification and include detailed supporting documentation including photographs, receipts, and /or other records to demonstrate compliance with Ordering Provisions c.i. and c.ii.;

e. Within 365 days, obtain written approval of all plans, drawings, reports and well completion data for the Facility; and

f. Within 380 days, submit written certification demonstrating compliance.

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: Katy Schumann, Enforcement Division, Enforcement Team 2, MC 169, (512)239-2602; Debra Barber, Enforcement Division, MC 219, (512) 239-0412
TCEQ SEP Coordinator: N/A
Respondent: W. L. Humiston, President, Brush Country Development Corporation, 424 North Camp Street, Seguin, Texas 78155
Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) *PCW Revision October 30, 2008*

TCEQ

DATES					
Assigned	16-May-2011				
PCW	27-May-2011	Screening	18-May-2011	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Brush Country Development Corporation		
Reg. Ent. Ref. No.	RN106103765		
Facility/Site Region	16-Laredo	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	41689	No. of Violations	4
Docket No.	2011-0796-PWS-E	Order Type	1660
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Katy Schumann
		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 0.0% Enhancement *Subtotals 2, 3, & 7* $0

Notes: No adjustment for Compliance History.

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* $62

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

Total EB Amounts $627
Approx. Cost of Compliance $7,771

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* $488

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $488

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* $488

DEFERRAL 20.0% Reduction *Adjustment* -$97

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 $391

Screening Date 18-May-2011 **Docket No.** 2011-0796-PWS-E **PCW**

Respondent Brush Country Development Corporation

Policy Revision 2 (September 2002)

Case ID No. 41689

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106103765

Media [Statute] Public Water Supply

Enf. Coordinator Katy Schumann

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

Adjustment Percentage (Subtotal 2) 0%

>> 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

No adjustment for Compliance History.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date	18-May-2011	**Docket No.** 2011-0796-PWS-E	**PCW**
Respondent	Brush Country Development Corporation		*Policy Revision 2 (September 2002)*
Case ID No.	41689		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN106103765		
Media [Statute]	Public Water Supply		
Enf. Coordinator	Katy Schumann		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.42(b)(1)

Violation Description Failed to provide disinfection facilities for microbiological control and distribution protection.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

OR

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failure to provide disinfection facilities prevents the water from being adequately disinfected and thereby could expose consumers to a significant amount of contaminants which would exceed levels that are protective of human health.

Adjustment $750

$250

Violation Events

Number of Violation Events 1 | 29 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $250

One monthly event is recommended, calculated from the date of the investigation, March 2, 2011, to the date of compliance, March 31, 2011.

Good Faith Efforts to Comply

25.0% Reduction $62

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

Notes: The Respondent achieved compliance March 31, 2011.

Violation Subtotal $188

Economic Benefit (EB) for this violation

Estimated EB Amount $6

Statutory Limit Test

Violation Final Penalty Total $188

This violation Final Assessed Penalty (adjusted for limits) $188

Economic Benefit Worksheet

Respondent Brush Country Development Corporation
Case ID No. 41689
Reg. Ent. Reference No. RN106103765
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment	$1,071	2-Mar-2011	31-Mar-2011	0.08	$0	$6	$6
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: The delayed cost includes the estimated amount necessary to install disinfection equipment, calculated from the date of the investigation to the date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$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 $1,071

TOTAL $6

Screening Date	18-May-2011	**Docket No.** 2011-0796-PWS-E	**PCW**
Respondent	Brush Country Development Corporation		*Policy Revision 2 (September 2002)*
Case ID No.	41689		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN106103765		
Media [Statute]	Public Water Supply		
Enf. Coordinator	Katy Schumann		

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 290.39(e)(1), (e)(3) and (h)(1) and Tex. Health & Safety Code § 341.035(c)

Violation Description Failed to submit engineering plans and specifications and receive written approval prior to beginning construction of a new public water supply system.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $900

$100

Violation Events

Number of Violation Events: 1

77 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $100

One single event is recommended.

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 $100

Economic Benefit (EB) for this violation

Estimated EB Amount $467

Statutory Limit Test

Violation Final Penalty Total $100

This violation Final Assessed Penalty (adjusted for limits) $100

Economic Benefit Worksheet

Respondent Brush Country Development Corporation
Case ID No. 41689
Req. Ent. Reference No. RN106103765
Media Public Water Supply
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction	$5,000	2-Mar-2011	1-Jul-2012	1.33	$22	$445	$467
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 to have a professional engineer prepare and submit as-built plans and specifications of the existing Facility to the TCEQ for review and approval, calculated from the date of the investigation to the estimated date of compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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 $5,000

TOTAL $467

Screening Date	18-May-2011	**Docket No.** 2011-0796-PWS-E	**PCW**
Respondent	Brush Country Development Corporation		*Policy Revision 2 (September 2002)*
Case ID No.	41689		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN106103765		
Media [Statute]	Public Water Supply		
Enf. Coordinator	Katy Schumann		

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 290.43(c)(3)

Violation Description Failed to provide an overflow on the Facility's ground storage tank ("GST") that is designed in strict accordance with American Water Works Association ("AWWA") standards. Specifically, at the time of the investigation, it was documented that the overflow on the GST did not have a screen or cover nor was it accessible for inspection.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential		x	

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failure to ensure that the overflow on the GST is screened/covered and accessible for inspection could allow defects to go undetected which could expose the stored water to a significant amount of contaminants which would not exceed levels that are protective of human health.

Adjustment $900

$100

Violation Events

Number of Violation Events: 1

77 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $100

One quarterly event is recommended, calculated from the date of the investigation, March 2, 2011, to the date of screening, May 18, 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 $100

Economic Benefit (EB) for this violation

Estimated EB Amount $14

Statutory Limit Test

Violation Final Penalty Total $100

This violation Final Assessed Penalty (adjusted for limits) $100

Economic Benefit Worksheet

Respondent Brush Country Development Corporation
Case ID No. 41689
Reg. Ent. Reference No. RN106103765
Media Public Water Supply
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction	$200	2-Mar-2011	1-Mar-2012	1.00	$1	$13	$14
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 to ensure that the overflow on the GST is modified to meet AWWA standards, calculated from the date of the investigation to the estimated date of compliance.

Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.00	$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 $200

TOTAL $14

Screening Date	18-May-2011	**Docket No.** 2011-0796-PWS-E	**PCW**
Respondent	Brush Country Development Corporation		*Policy Revision 2 (September 2002)*
Case ID No.	41689		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN106103765		
Media [Statute]	Public Water Supply		
Enf. Coordinator	Katy Schumann		

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 290.41(c)(3)(A)

Violation Description Failed to submit well completion data for review and approval prior to placing a public drinking water well into service.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $900

$100

Violation Events

Number of Violation Events 1 | 77 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $100

One single event is recommended.

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 $100

Economic Benefit (EB) for this violation

Estimated EB Amount $140

Statutory Limit Test

Violation Final Penalty Total $100

This violation Final Assessed Penalty (adjusted for limits) $100

Economic Benefit Worksheet

Respondent Brush Country Development Corporation
Case ID No. 41689
Reg. Ent. Reference No. RN106103765
Media Public Water Supply
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
	No commas or $						
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)	$1,500	2-Mar-2011	1-Jul-2012	1.33	$7	$133	$140
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: The delayed cost includes the estimated amount to compile well completion data and submit it to the Executive Director for approval, calculated from the date of the investigation to the estimated date of compliance.

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

Disposal				0.00	$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 $1,500

TOTAL $140

Compliance History

Customer/Respondent/Owner-Operator:	CN603825431	BRUSH COUNTRY DEVELOPMENT CORPORATION	Classification:	Rating:
Regulated Entity:	RN106103765	US BORDER PATROL STATION FREER	Classification:	Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0660022

Location: 5087 TEXAS HIGHWAY 44, DUVAL COUNTY, TEXAS

TCEQ Region: REGION 16 - LAREDO

Date Compliance History Prepared: May 18, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: May 18, 2006 to May 18, 2011

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

Name: Katy Schumann Phone: (512) 239-2602

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

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.)

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 BRUSH COUNTRY DEVELOPMENT CORPORATION RN106103765	**§ § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2011-0796-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 Brush Country Development Corporation ("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 a public water supply at 5087 Texas Highway 44 in Duval County, Texas (the "Facility") that has one service connection and serves at least 25 people per day for at least 60 days per year.

2. The Commission and 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 May 15, 2011.

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 Four Hundred Eighty-Eight Dollars ($488) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Hundred Ninety-One Dollars ($391) of the administrative penalty and Ninety-Seven Dollars ($97) 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 recognizes that the Respondent has implemented the following corrective measures at the Facility:

   a. Installed disinfection equipment to maintain the required disinfection residual on March 31, 2011; and

   b. Notified the TCEQ of the start-up of a new public water system on March 2, 2011.

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

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

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

II. ALLEGATIONS

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

1. Failed to provide disinfection facilities for microbiological control and distribution protection, in violation of 30 TEX. ADMIN. CODE § 290.42(b)(1), as documented during an investigation conducted on March 2, 2011.

2. Failed to submit engineering plans and specifications and receive written approval prior to beginning construction of a new public water supply system, in violation of 30 TEX. ADMIN. CODE § 290.39(e)(1), (e)(3) and (h)(1) and TEX. HEALTH & SAFETY CODE § 341.035(c), as documented during an investigation conducted on March 2, 2011.

3. Failed to provide an overflow on the Facility's ground storage tank ("GST") that is designed in strict accordance with American Water Works Association ("AWWA")

standards, in violation of 30 TEX. ADMIN. CODE § 290.43(c)(3), as documented during an investigation conducted on March 2, 2011.

4. Failed to submit well completion data for review and approval prior to placing a public drinking water well into service, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(A), as documented during an investigation conducted on March 2, 2011.

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: Brush Country Development Corporation, Docket No. 2011-0796-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 60 days after the effective date of this Agreed Order, provide the GST with an overflow that conforms to AWWA design standards with a gravity-hinged and weighted cover that fits tightly with no gap over 1/16 inch and ensure that it is accessible from a ladder or balcony for inspection purposes, in accordance with 30 TEX. ADMIN. CODE § 290.43.

   b. Within 75 days after the effective date of this Agreed Order, submit written certification as described below in Ordering Provision No. 2.f, 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:

      i. Submit "as-built" plans, specifications and engineering reports for the Facility, as required by 30 TEX. ADMIN. CODE § 290.39. The plans, specifications and reports shall be submitted to the address specified in Ordering Provision No. 2.c.ii. Respond completely and adequately, as

determined by the TCEQ, to all requests for information concerning "as-built" plans and specifications within 30 days after the date of such requests, or by any other deadline specified in writing; and

ii. Submit well completion data for review and approval, in accordance with 30 TEX. ADMIN. CODE § 290.41. The well completion data shall be submitted to:

Water Supply Division
Plan and Groundwater Section, MC 159
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

d. Within 195 days after the effective date of this Agreed Order, submit written certification as described below in Ordering Provision No. 2.f, and include detailed supporting documentation including photographs, receipts, and /or other records to demonstrate compliance with Ordering Provision Nos. 2.c.i and 2.c.ii.

e. Within 365 days after the effective date of this Agreed Order, obtain written approval of all plans, drawings, reports and well completion data for the Facility.

f. Within 380 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.e. 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
Laredo Regional Office
Texas Commission on Environmental Quality
707 East Calton Road, Suite 304
Laredo, Texas 78041-3887

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 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.

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

For the Executive Director

9/22/11
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.

W. L. Hamilton
Signature

9-12-2011
Date

W. L. Hamilton
Name (Printed or typed)
Authorized Representative of
Brush Country Development Corporation

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.