

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-1143-EAQ-E **TCEQ ID:** RN103117438 **CASE NO.:** 40009
RESPONDENT NAME: H. E. BUTT GROCERY COMPANY and HEB Grocery Company, LP

| | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 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 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 checked="" type="checkbox"/> EDWARDS AQUIFER |
| <p>SITE WHERE VIOLATION(S) OCCURRED: Descending Dove Commercial, located on the south side of State Highway 46, south of Windmill Ranch Road, Bulverde, Comal County</p> <p>TYPE OF OPERATION: Commercial development</p> <p>SMALL BUSINESS: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 20, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. JR Cao, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2543; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Abel Martinez, Vice President - Compliance, H. E. BUTT GROCERY COMPANY and HEB Grocery Company, LP, 646 South Main Avenue, San Antonio, Texas 78204 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: May 25, 2010</p> <p>Date of NOV/NOE Relating to this Case: June 29, 2010 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WATER</p> <p>Failed to obtain approval of a Contributing Zone Plan ("CZP") modification prior to conducting a regulated activity over the Edwards Aquifer Contributing Zone. Specifically, the following activities were observed on approximately two acres without approval of a CZP modification: soil disturbance from roadway clearing, the installation of construction trailers, the removal of nine on-site sewage facilities, and the removal of a building slab [30 TEX. ADMIN. CODE § 213.23(a)(1) and (i), and Edwards Aquifer Protection Program ("EAPP") No. 1372.00, Standard Conditions No. 5].</p> | <p>Total Assessed: \$750</p> <p>Total Deferred: \$150 <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: \$600</p> <p>Compliance History Classifications: Person/CN - Average Site/RN - Average</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that on June 11, 2010, the Respondents received approval of a modification to CZP, EAPP Identification No. 1372.02.</p> |

Additional ID No(s): EAPP Identification No. 1372.02/13-99102001



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

| | | | | | |
|--------------|-----------------|------------|------------------|-------------|----------------|
| DATES | Assigned | 5-Jul-2010 | | | |
| | PCW | 9-Jul-2010 | Screening | 12-Jul-2010 | EPA Due |

| | |
|----------------------------------------|--------------------------------------------------------|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | H. E. BUTT GROCERY COMPANY and HEB Grocery Company, LP |
| Reg. Ent. Ref. No. | RN103117438 |
| Facility/Site Region | 13-San Antonio |
| Major/Minor Source | Minor |

| | | | |
|----------------------------------------|-----------------|------------------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 40009 | No. of Violations | 1 |
| Docket No. | 2010-1143-EAQ-E | Order Type | 1660 |
| Media Program(s) | Edwards Aquifer | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | JR Cao |
| | | EC's Team | Enforcement Team 1 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$10,000 |

Penalty Calculation Section

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

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 | \$250 |
|------------------------------------------------------|-------------------|-------|

| | | | |
|-------------------------|-------------------|-------------------|-----|
| Economic Benefit | 0.0% Enhancement* | Subtotal 6 | \$0 |
|-------------------------|-------------------|-------------------|-----|

| | |
|----------------------------|---------|
| Total EB Amounts | \$10 |
| Approx. Cost of Compliance | \$4,500 |

*Capped at the Total EB \$ Amount

| | | |
|-----------------------------|-----------------------|-------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$750 |
|-----------------------------|-----------------------|-------|

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

Reduces or enhances the Final Subtotal by the indicated percentage.

| | |
|--------------|--|
| Notes | |
|--------------|--|

| | |
|-----------------------------|-------|
| Final Penalty Amount | \$750 |
|-----------------------------|-------|

| | | |
|-----------------------------------|-------------------------------|-------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$750 |
|-----------------------------------|-------------------------------|-------|

| | | | |
|-----------------|-----------------|-------------------|--------|
| DEFERRAL | 20.0% Reduction | Adjustment | -\$150 |
|-----------------|-----------------|-------------------|--------|

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

| | |
|--------------|--------------------------------------------|
| Notes | Deferral offered for expedited settlement. |
|--------------|--------------------------------------------|

| | |
|------------------------|-------|
| PAYABLE PENALTY | \$600 |
|------------------------|-------|

Screening Date 12-Jul-2010

Docket No. 2010-1143-EAQ-E

PCW

Respondent H. E. BUTT GROCERY COMPANY and HEB

Policy Revision 2 (September 2002)

Case ID No. 40009

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103117438

Media [Statute] Edwards Aquifer

Enf. Coordinator JR Cao

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 (<i>number of NOVs meeting criteria</i>) | 0 | 0% |
| | Other written NOVs | 0 | 0% |
| 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</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% |

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)

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

No adjustment for Compliance History.

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

Screening Date 12-Jul-2010

Docket No. 2010-1143-EAQ-E

PCW

H. E. BUTT GROCERY COMPANY and HEB Grocery Company,

Respondent LP

Policy Revision 2 (September 2002)

Case ID No. 40009

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103117438

Media [Statute] Edwards Aquifer

Enf. Coordinator JR Cao

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.23(a)(1) and (i), and Edwards Aquifer Protection Program No. 1372.00, Standard Conditions No. 5

Violation Description Failed to obtain approval of a contributing zone plan ("CZP") modification prior to conducting a regulated activity over the Edwards Aquifer Contributing Zone, as documented during an investigation conducted on May 25, 2010. Specifically, the following activities were observed on approximately two acres without approval of a CZP modification: soil disturbance from roadway clearing, the installation of construction trailers, the removal of nine on-site sewage facilities, and the removal of a building slab.

Base Penalty \$10,000

>> 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 \$9,000

\$1,000

Violation Events

Number of Violation Events 1

17 Number of violation days

| | |
|--------------|---|
| daily | |
| weekly | |
| monthly | X |
| quarterly | |
| semiannual | |
| annual | |
| single event | |

mark only one with an x

Violation Base Penalty \$1,000

One monthly event is recommended from the investigation date (May 25, 2010), to the date of compliance (June 11, 2010).

Good Faith Efforts to Comply

25.0% Reduction

\$250

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

Notes

The Respondent came into compliance on June 11, 2010.

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$10

Violation Final Penalty Total \$750

This violation Final Assessed Penalty (adjusted for limits) \$750

Economic Benefit Worksheet

Respondent H. E. BUTT GROCERY COMPANY and HEB Grocery Company, LP
Case ID No. 40009
Req. Ent. Reference No. RN103117438
Media Edwards Aquifer
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

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------|-----------|---------------|-------------|------|----------------|---------------|-----------|
| Equipment | | | | 0.00 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.00 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 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 | \$4,500 | 25-May-2010 | 11-Jun-2010 | 0.05 | \$10 | n/a | \$10 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated cost to prepare and submit a modification to the existing CZP. Date required is the date of the investigation. Final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$4,500

TOTAL

\$10

Compliance History Report

Customer/Respondent/Owner-Operator: CN600282156 H. E. BUTT GROCERY COMPANY Classification: AVERAGE Rating: 3.47
Regulated Entity: RN103117438 DESCENDING DOVE COMMERCIAL Classification: AVERAGE BY DEFAULT Site Rating: 3.01
ID Number(s): EDWARDS AQUIFER REGISTRATION 13-99102001
Location: Located on the south side of State Highway 46, south of Windmill Ranch Road, Bulverde, Comal County, Texas

TCEQ Region: REGION 13 - SAN ANTONIO

Date Compliance History Prepared: July 15, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: July 15, 2005 to July 15, 2010

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

Name: JR Cao Phone: (512) 239-2543

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? 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: 9/1/2009 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 07/01/2010 (796859)
 - 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

Compliance History Report

Customer/Respondent/Owner-Operator: CN601297963 HEB Grocery Company, LP Classification: AVERAGE Rating: 2.28
Regulated Entity: RN103117438 DESCENDING DOVE COMMERCIAL Classification: Site Rating:
ID Number(s): EDWARDS AQUIFER REGISTRATION 13-99102001
Location: Located on the south side of State Highway 46, south of Windmill Ranch Road, Bulverde, Comal County, Texas
TCEQ Region: REGION 13 - SAN ANTONIO
Date Compliance History Prepared: July 15, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 15, 2005 to July 15, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: JR Cao Phone: (512) 239-2543

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? 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.

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
H. E. BUTT GROCERY COMPANY
AND HEB GROCERY COMPANY,
LP
RN103117438**

§
§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2010-1143-EAQ-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 H. E. BUTT GROCERY COMPANY and HEB Grocery Company, LP ("the Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. The Respondents own and operate a commercial development located on the south side of State Highway 46, south of Windmill Ranch Road in Bulverde, Comal County, Texas (the "Site").
2. The Respondents have caused, suffered, allowed or permitted the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
3. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents are subject to the Commission's jurisdiction.
4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about July 4, 2010.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Seven Hundred Fifty Dollars (\$750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid Six Hundred Dollars (\$600) of the administrative penalty and One Hundred Fifty Dollars (\$150) is deferred contingent upon the Respondents' 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 Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondents to pay 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 Respondents 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 June 11, 2010, the Respondents received approval of a modification to Contributing Zone Plan ("CZP"), Edwards Aquifer Protection Program ("EAPP") Identification No. 1372.02.
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 Respondents have 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 owners and operators of the Site, the Respondents are alleged to have failed to obtain approval of a CZP modification prior to conducting a regulated activity over the Edwards Aquifer Contributing Zone, in violation of 30 TEX. ADMIN. CODE § 213.23(a)(1) and (i), and EAPP No. 1372.00, Standard Conditions No. 5, as documented during an investigation conducted on May 25, 2010. Specifically, the following activities were observed on approximately two acres without approval of a CZP modification: soil disturbance from roadway clearing, the installation of construction trailers, the removal of nine on-site sewage facilities, and the removal of a building slab.

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' 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: H. E. BUTT GROCERY COMPANY and HEB Grocery Company, LP, Docket No. 2010-1143-EAQ-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. H. E. BUTT GROCERY COMPANY and HEB Grocery Company, LP. are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.
3. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents 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.
5. 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..

6. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, 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 Szoln
For the Executive Director

2/7/2011
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, 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.

Abel Martinez
Signature

12/14/10
Date

Abel Martinez
Name (Printed or typed)
Authorized Representative of
H. E. BUTT GROCERY COMPANY and
HEB Grocery Company, LP

VP Partner Relations
Title
Risk Solutions & Compliance

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.