EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-1933-PWS-E **TCEQ ID:** RN105502793 **CASE NO.:** 40795

RESPONDENT NAME: Hartmut F. Mueller dba Hofbrau Park

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
X PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Hofbrau Park, 102 Alpine Drive, Round Mountain, Blanco County

TYPE OF OPERATION: Public water supply

SMALL BUSINESS: X **Yes** ___ **No**

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on May 2, 2011. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Amanda Henry, Enforcement Division, Enforcement Team 2, MC R-12, (713) 767-3672; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
Respondent: Mr. Hartmut "Harry" Mueller, Owner, Hofbrau Park, 734 Sandy Harbout Drive, Horseshoe Bay, Texas 78657
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint __ Routine __ Enforcement Follow-up _X_ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** September 27, 2010 **Date of NOV/NOE Relating to this Case:** October 29, 2010 (NOE) **Background Facts:** This was a records review. **WATER** 1) Failed to comply with the maximum contaminant level ("MCL") for total coliform for the months of August and September 2009 and failed to provide public notification of the MCL exceedence [30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.031(a)]. 2) Failed to collect at least five routine distribution coliform samples the month following a total coliform-positive sample result and failed to provide public notification of the failure to sample [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(B)].	**Total Assessed:** $1,379 **Total Deferred:** $275 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $1,104 **Compliance History Classifications:** Person/CN – N/A Site/RN –N/A **Major Source:** __ **Yes** _X_ **No** **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Within 10 days after the effective date of this Agreed Order: i. Develop and implement procedures to ensure all necessary public notifications are provided in a timely manner to the customers of the Facility; and ii. Begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants. b. Within 25 days after the effective date of this Agreed Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.i. c. Within 195 days after the effective date of this agreed order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision a.ii.

Additional ID No(s).: PWS Registration 0160033

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES						
Assigned	8-Nov-2010					
PCW	30-Nov-2010	**Screening**	17-Nov-2010	**EPA Due**	31-Aug-2010	

RESPONDENT/FACILITY INFORMATION			
Respondent	Hartmut F. Mueller dba Hofbrau Park		
Reg. Ent. Ref. No.	RN105502793		
Facility/Site Region	11-Austin	**Major/Minor Source**	Minor

CASE INFORMATION			
Enf./Case ID No.	40795	**No. of Violations**	2
Docket No.	2010-1933-PWS-E	**Order Type**	1660
Media Program(s)	Public Water Supply	**Government/Non-Profit**	No
Multi-Media		**Enf. Coordinator**	Amanda Henry
		EC's Team	Enforcement Team 2

Admin. Penalty $ Limit Minimum $50 Maximum $1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* **$750**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **37.0%** Enhancement — *Subtotals 2, 3, & 7* **$277**

Notes: Enhancement for three NOVs with same/similar violations, one NOV with dissimilar violations, and one final agreed order with a denial of liability.

Culpability No **0.0%** Enhancement — *Subtotal 4* **$0**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments — *Subtotal 5* **$0**

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

Total EB Amounts $353
Approx. Cost of Compliance $335

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 — *Final Subtotal* **$1,027**

OTHER FACTORS AS JUSTICE MAY REQUIRE **34.3%** — *Adjustment* **$352**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement recommended to recover the avoided costs of compliance.

Final Penalty Amount **$1,379**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$1,379**

DEFERRAL **20.0%** Reduction — *Adjustment* **-$275**

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 **$1,104**

Screening Date 17-Nov-2010 **Docket No.** 2010-1933-PWS-E **PCW**

Respondent Hartmut F. Mueller dba Hofbrau Park

Policy Revision 2 (September 2002)

Case ID No. 40795

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105502793

Media [Statute] Public Water Supply

Enf. Coordinator Amanda Henry

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	3	15%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 37%

>> 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

Enhancement for three NOVs with same/similar violations, one NOV with dissimilar violations, and one final agreed order with a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 37%

Screening Date 17-Nov-2010 **Docket No.** 2010-1933-PWS-E **PCW**

Respondent Hartmut F. Mueller dba Hofbrau Park *Policy Revision 2 (September 2002)*

Case ID No. 40795 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN105502793

Media [Statute] Public Water Supply

Enf. Coordinator Amanda Henry

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(f)(3) and 290.122(b)(2)(B) and Tex. Health & Safety Code § 341.031(a)

Violation Description Failed to comply with the Maximum Contaminant Level ("MCL") for total coliform for the months of August and September 2009 and failed to provide public notification of the MCL exceedence for the month of August 2009.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR	Harm: Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: As a result of the exceedences, persons served by the Facility have been exposed to significant amounts of contaminants which do not exceed levels protective of human health.

Adjustment $750

$250

Violation Events

Number of Violation Events: 2 — 61 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $500

Two monthly events are 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 $500

Economic Benefit (EB) for this violation

Estimated EB Amount $216

Statutory Limit Test

Violation Final Penalty Total $920

This violation Final Assessed Penalty (adjusted for limits) $920

Economic Benefit Worksheet

Respondent Hartmut F. Mueller dba Hofbrau Park
Case ID No. 40795
Reg. Ent. Reference No. RN105502793
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				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]	$200	1-Aug-2009	30-Sep-2009	1.08	$11	$200	$211
Other (as needed)	$5	1-Aug-2009	31-Aug-2009	1.00	$0	$5	$5
Notes for AVOIDED costs	The one-time avoided cost includes the estimated amount to provide additional oversight necessary to prevent or avoid the exceedences, calculated for the months the exceedences occured and the other avoided cost includes the amount necessary to provide public notification, calculated for the time frame the notice should have been provided.						

Approx. Cost of Compliance $205

TOTAL $216

Screening Date 17-Nov-2010 **Docket No.** 2010-1933-PWS-E **PCW**

Respondent Hartmut F. Mueller dba Hofbrau Park *Policy Revision 2 (September 2002)*

Case ID No. 40795 *PCW Revision October 30, 2008*

Reg. Ent. Reference No. RN105502793

Media [Statute] Public Water Supply

Enf. Coordinator Amanda Henry

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(F) and 290.122(c)(2)(B)

Violation Description Failed to collect at least five routine distribution coliform samples the month following a total coliform-positive sample result and failed to provide public notification of the failure to sample for the month of October 2009.

Base Penalty $1,000

>> Environmental, Property and Human Health Matrix

OR	Harm			
Release	Major	Moderate	Minor	
Actual				
Potential	x			

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Failure to properly sample may expose the public to a significant amount of undetected contaminants that exceed levels protective of human health.

Adjustment $750

$250

Violation Events

Number of Violation Events: 1 — 30 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, based on the month sampling was not conducted.

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 $250

Economic Benefit (EB) for this violation

Estimated EB Amount $137

Statutory Limit Test

Violation Final Penalty Total $460

This violation Final Assessed Penalty (adjusted for limits) $460

Economic Benefit Worksheet

Respondent Hartmut F. Mueller dba Hofbrau Park
Case ID No. 40795
Reg. Ent. Reference No. RN105502793
Media Public Water Supply
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Item Description	No commas or $						
Delayed Costs							
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]	$125	1-Oct-2009	31-Oct-2009	1.00	$6	$125	$131
Other (as needed)	$5	1-Nov-2009	1-Feb-2010	1.17	$0	$5	$5
Notes for AVOIDED costs	The avoided costs include the estimated amount necessary ($25 x 5 samples + $5 x 1 public notice) to conduct routine coliform sampling and provide public notification of the failure to sample. The time period to collect the distribution sample is the month the samples were due. The date calculated for public notification is the time period that the notification should have been issued.						

Approx. Cost of Compliance $130

TOTAL $137

Compliance History

Customer/Respondent/Owner-Operator: CN603348376 MUELLER, HARTMUT F Classification: Rating:

Regulated Entity: RN105502793 HOFBRAU PARK Classification: Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0160033

Location: 102 ALPINE DR, ROUND MOUNTAIN, TX, 78663

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: November 17, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: November 17, 2005 to November 17, 2010

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

Name: Amanda Henry Phone: 713-767-3672

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? 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.

Effective Date: 12/04/2008 ADMINORDER 2008-1007-PWS-E

Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.39(c)
Description: Failed to obtain approval of plans, specifications, and well completion data prior to operating a public water supply system.

Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.42(b)(1)
Description: Hofbrau RV Park failed to provide disinfectant equipment to maintain the required minimum disinfectant residual.

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 07/16/2010 (827425)
2 08/30/2010 (850688)
3 09/30/2010 (865593)
4 10/11/2010 (866082)
5 10/11/2010 (866136)
6 11/05/2010 (866137)
7 10/22/2010 (871460)

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

Date: 08/20/2009 (865593) CN603348376

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)

Description: TCR MCL Violation 08/2009 - System exceeded a Maximum Contaminant Level (MCL) Violation.

Self Report? NO Classification: Moderate

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

Description: TCR PN MCL Violation 08/2009 - Failure to post a public notice for exceeding a Maximum Contaminant Level (MCL) Violation.

Date: 09/16/2009 (866082) CN603348376

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)

Description: TCR MCL Violation 09/2009 - System exceeded a Maximum Contaminant Level (MCL) Violation.

Date: 12/08/2009 (866136) CN603348376

Self Report? NO Classification: Moderate

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

Description: TCR Increase Monitoring Violation 10/2009 - Failure to collect all 5 distribution samples following a coliform found month.

Self Report? NO Classification: Moderate

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

Description: TCR PN Increase Monitoring Violation 10/2009 - Failure to post public notice for not collecting all 5 distribution samples following a coliform found month.

Date: 07/19/2010 (827425) CN603348376

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(d)(2)(A)
30 TAC Chapter 290, SubChapter F 290.110(b)(2)

Description: Failure to maintain a minimum free chlorine residual of 0.2 mg/l throughout the distribution system at all times.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(4)(A)

Description: Failure to monitor the disinfection residual at representative locations in the distribution system a least once every seven days.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(m)(1)

Description: Failure to perform tank annual inspection of the pressure tanks.

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(i)(III)

Description: Failure to maintain records of the amount of chemicals used each week.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.110(d)(1)

Description: Failure to monitor free chlorine residual to a minimum accuracy of plus or minus 0.1mg/l using amperometric titration, DPD colorimetric, or ferrous titration chlorine test kit.

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 HARTMUT F. MUELLER DBA HOFBRAU PARK RN105502793	**§ § § § § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2010-1933-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 Hartmut F. Mueller dba Hofbrau Park ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a public water supply at 102 Alpine Drive in Round Mountain, Blanco County, Texas (the "Facility") that has approximately 32 service connections and serves at least 25 people per day for at least 60 days per year.

2. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.

3. The Respondent received notice of the violations alleged in Section II ("Allegations") on November 8, 2010.

4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

5. An administrative penalty in the amount of One Thousand Three Hundred Seventy-Nine Dollars ($1,379) is assessed by the Commission in settlement of the violations alleged in

Section II ("Allegations"). The Respondent has paid One Thousand One Hundred Four Dollars ($1,104) of the administrative penalty and Two Hundred Seventy-Five Dollars ($275) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

6. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

7. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

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

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

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

II. ALLEGATIONS

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

1. Failed to comply with the maximum contaminant level ("MCL") for total coliform for the months of August and September 2009 and failed to provide public notification of the MCL exceedence for the month of August 2009, in violation of 30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.031(a), as documented during a record review conducted on September 27, 2010.

2. Failed to collect at least five routine distribution coliform samples the month following a total coliform-positive sample result and failed to provide public notification of the failure to sample for the month of October 2009, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(B), as documented during a record review conducted on September 27, 2010.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 5 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Hartmut F. Mueller dba Hofbrau Park, Docket No. 2010-1933-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 10 days after the effective date of this Agreed Order:

      i. Develop and implement procedures to ensure all necessary public notifications are provided in a timely manner to the customers of the Facility, in accordance with 30 TEX. ADMIN. CODE § 290.122; and

      ii. Begin complying with applicable coliform monitoring requirements by collecting routine coliform distribution samples and providing water that meets the provisions regarding microbial contaminants, in accordance with 30 TEX. ADMIN. CODE § 290.109. This provision will be satisfied upon six months of compliance monitoring and reporting.

   b. Within 25 days after the effective date of this Agreed Order, submit written certification as described below in Ordering Provision No. 2.c., and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.i.

   c. Within 195 days after the effective date of this agreed order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a.ii. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

      "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant

penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section Manager
Austin Regional Office
Texas Commission on Environmental Quality
2800 S IH 35, Suite 100
Austin, Texas 78704-5712

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 — Date: 5/3/2011

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.

Signature — Date: 4/18/11

Hartmut F. Mueller — Owner

Name (Printed or typed) — Title
Authorized Representative of
Hartmut F. Mueller dba Hofbrau Park

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.