**Executive Summary – Enforcement Matter – Case No. 41341**
**YES COMMUNITIES, INC. dba Northwest Pines Mobile Home Community**
**RN101231264**
**Docket No. 2011-0437-UTL-E**

**Order Type:**
1660 Agreed Order
**Findings Order Justification:**
N/A
**Media:**
UTL
**Small Business:**
No
**Location(s) Where Violation(s) Occurred:**
Northwest Pines Mobile Home Community, 14022 Walters Road, Harris County
**Type of Operation:**
Mobile home community with a public water supply
**Other Significant Matters:**
Additional Pending Enforcement Actions: No
Past-Due Penalties: No
Other: N/A
Interested Third-Parties: None
**Texas Register Publication Date:** June 17, 2011
**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** $436
**Amount Deferred for Expedited Settlement:** $87
**Amount Deferred for Financial Inability to Pay:** $0
**Total Paid to General Revenue:** $349
**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. 41341**
**YES COMMUNITIES, INC. dba Northwest Pines Mobile Home Community**
**RN101231264**
**Docket No. 2011-0437-UTL-E**

### *Investigation Information*

**Complaint Date(s):** N/A
**Complaint Information**: N/A
**Date(s) of Investigation:** March 14, 2011
**Date(s) of NOE(s):** March 14, 2011

### *Violation Information*

Failed to submit to the Executive Director for approval by the required deadline, an adoptable Emergency Preparedness Plan ("EPP") that demonstrates the Facility's ability to provide emergency operations [30 TEX. ADMIN. CODE §§ 290.39(o)(1) and 291.162(a) and (j) and TEX. WATER CODE § 13.1395(b)(2)].

### *Corrective Actions/Technical Requirements*

**Corrective Action(s) Completed:**

The Executive Director recognizes that the Respondent submitted the EPP on March 25, 2011 and the Commission deemed the EPP adoptable on April 1, 2011.

**Technical Requirements:**

N/A

### *Litigation Information*

**Date Petition(s) Filed:** N/A
**Date Answer(s) Filed:** N/A
**SOAH Referral Date:** N/A
**Hearing Date(s):** N/A
**Settlement Date:** N/A

### *Contact Information*

**TCEQ Attorney:** N/A
**TCEQ Enforcement Coordinator:** Katy Schumann, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-2602; Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
**TCEQ SEP Coordinator**: N/A
**Respondent:** Gary P. McDaniel, Chief Executive Officer, YES COMMUNITIES, INC., 211 East 7th Street, Suite 620, Austin, Texas 78701-3218
Walter L. Moreland, Managing Partner, YES COMMUNITIES, INC., 211 East 7th Street, Suite 620, Austin, Texas 78701-3218
**Respondent's Attorney:** N/A

# Penalty Calculation Worksheet (PCW)

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

TCEQ

| DATES | | | | | | |
|---|---|---|---|---|---|---|
| | **Assigned** | 21-Mar-2011 | | | | |
| | **PCW** | 21-Mar-2011 | **Screening** | 21-Mar-2011 | **EPA Due** | |

**RESPONDENT/FACILITY INFORMATION**

| | | | |
|---|---|---|---|
| **Respondent** | YES COMMUNITIES, INC. dba Northwest Pines Mobile Home Community | | |
| **Reg. Ent. Ref. No.** | RN101231264 | | |
| **Facility/Site Region** | 12-Houston | **Major/Minor Source** | Minor |

**CASE INFORMATION**

| | | | |
|---|---|---|---|
| **Enf./Case ID No.** | 41341 | **No. of Violations** | 1 |
| **Docket No.** | 2011-0437-UTL-E | **Order Type** | 1660 |
| **Media Program(s)** | Public Water Utilities | **Government/Non-Profit** | No |
| **Multi-Media** | | **Enf. Coordinator** | Katy Schumann |
| | | **EC's Team** | Enforcement Team 2 |

**Admin. Penalty $ Limit** Minimum $0 Maximum $500

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** — *Subtotal 1*: $450

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

**Compliance History** 7.0% Enhancement — *Subtotals 2, 3, & 7*: $31

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

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

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** — *Subtotal 5*: $45

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

Total EB Amounts $13
Approx. Cost of Compliance $328

**Capped at the Total EB $ Amount*

**SUM OF SUBTOTALS 1-7** — *Final Subtotal*: $436

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

*Final Penalty Amount*: $436

**STATUTORY LIMIT ADJUSTMENT** — *Final Assessed Penalty*: $436

**DEFERRAL** 20.0% Reduction — *Adjustment*: -$87

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**: $349

**Screening Date** 21-Mar-2011 **Docket No.** 2011-0437-UTL-E **PCW**

**Respondent** YES COMMUNITIES, INC. dba Northwest Pines Mc

*Policy Revision 2 (September 2002)*

**Case ID No.** 41341

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101231264

**Media [Statute]** Public Water Utilities

**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*) | 1 | 5% |
| | Other written NOVs | 1 | 2% |
| 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)*** 7%

## >> 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 one NOV with same/similar violations and one NOV with dissimilar violations.

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

**Screening Date** 21-Mar-2011 **Docket No.** 2011-0437-UTL-E **PCW**

**Respondent** YES COMMUNITIES, INC. dba Northwest Pines Mobile Home Co *Policy Revision 2 (September 2002)*

**Case ID No.** 41341 *PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101231264

**Media [Statute]** Public Water Utilities

**Enf. Coordinator** Katy Schumann

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code §§ 290.39(o)(1) and 291.162(a) and (j) and Tex. Water Code § 13.1395(b)(2)

**Violation Description** Failed to submit to the Executive Director for approval by the required deadline, an adoptable emergency preparedness plan ("EPP") that demonstrates the Facility's ability to provide emergency operations.

**Base Penalty** $500

## >> 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** $450

$50

## Violation Events

Number of Violation Events: 9 — 272 Number of violation days

*mark only one with an x*

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

**Violation Base Penalty** $450

Nine monthly events are recommended, calculated from the date the EPP was deemed not adoptable, June 22, 2010, to the date of screening, March 21, 2011.

## Good Faith Efforts to Comply

**10.0%** Reduction — $45

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

Notes: The Respondent achieved compliance on April 1, 2011.

**Violation Subtotal** $405

## Economic Benefit (EB) for this violation

**Estimated EB Amount** $13

## Statutory Limit Test

**Violation Final Penalty Total** $437

**This violation Final Assessed Penalty (adjusted for limits)** $437

# Economic Benefit Worksheet

**Respondent** YES COMMUNITIES, INC. dba Northwest Pines Mobile Home Community
**Case ID No.** 41341
**Reg. Ent. Reference No.** RN101231264
**Media** Public Water Utilities
**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) | $328 | 22-Jun-2010 | 1-Apr-2011 | 0.78 | $13 | n/a | $13 |
| Notes for DELAYED costs | The delayed costs includes the estimated amount ($41/hr labor and administrative cost x 8 hours) to develop and submit an adoptable EPP to the Executive Director. Date required is the date the plan was deemed not adoptable. Final date is 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** $328

**TOTAL** $13

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603389883 YES COMMUNITIES, INC. Classification: Rating:

Regulated Entity: RN101231264 NORTHWEST PINES MOBILE HOME COMMUNITY Classification: Site Rating:

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1011032

Location: 14022 WALTERS ROAD, HARRIS COUNTY, TEXAS

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: March 21, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: March 21, 2006 to March 21, 2011

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

Name: Ms. Kelly Wisian Phone: (512) 239 -2570

## 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.

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 05/08/2006 (461691)
2 09/09/2010 (850707)
3 02/07/2011 (894346)
4 02/11/2011 (895123)
5 03/14/2011 (905950)

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

Date: 09/09/2010 (850707) CN603389883

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.42(e)(4)(B)
Description: Failure to properly house the gas chlorination.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.110(b)(4)
Description: Failure to maintain the residual disinfectant concentration in the far reaches of the distribution system at a minimum of 0.2 mg/L free chlorine as per agency regulations.

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.46(l)
Description: Failure to flush all dead-end mains monthly, or more often if required, to maintain water quality.

Date: 02/11/2011 (895123) CN603389883

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.39(o)(1)
Description: Failed to submit to the Executive Director for approval by the required deadline an adoptable Emergency Preparedness Plan that demonstrates the Facility's ability to provide emergency operations.

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 YES COMMUNITIES, INC. DBA NORTHWEST PINES MOBILE HOME COMMUNITY RN101231264** | **§ § § § § § §** | **BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY** |

**AGREED ORDER**
**DOCKET NO. 2011-0437-UTL-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 YES COMMUNITIES, INC. dba Northwest Pines Mobile Home Community ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341 and TEX. WATER CODE ch. 13. 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 mobile home community with a public water supply at 14022 Walters Road in Harris County, Texas (the "Facility") that has approximately 330 service connections and serves at least 25 people per day for at least 60 days per year.

2. The Respondent owns and operates, in Texas, equipment or facilities for the transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use. The Respondent is not exempt from regulation under TEX. WATER CODE ch. 13 or the rules of the Commission.

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

4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 19, 2011.

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

6. An administrative penalty in the amount of Four Hundred Thirty-Six Dollars ($436) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Hundred Forty-Nine Dollars ($349) of the administrative penalty and Eighty-Seven Dollars ($87) 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.

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

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

9. The Executive Director recognizes that the Respondent submitted the Emergency Preparedness Plan ("EPP") on March 25, 2011 and the Commission deemed the EPP adoptable on April 1, 2011.

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

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

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

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to submit to the Executive Director for approval by the required deadline, an adoptable EPP that demonstrates the Facility's ability to provide emergency operations, in violation of 30 TEX. ADMIN. CODE §§ 290.39(o)(1) and 291.162(a) and (j) and TEX. WATER CODE § 13.1395(b)(2), as documented during a record review conducted on March 14, 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 6 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: YES COMMUNITIES, INC. dba Northwest Pines Mobile Home Community, Docket No. 2011-0437-UTL-E" to:

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

2. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. 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.

3. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

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

5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails

notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

# SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ _____
For the Executive Director 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.

_____ _____
Signature Date

_____ _____
Name (Printed or typed) Title
Authorized Representative of
YES COMMUNITIES, INC. dba Northwest Pines Mobile Home Community

**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.