

**Executive Summary – Enforcement Matter – Case No. 41996  
SHAUNA LYNN MCGEE LLC D/B/A BERT & ERNIES GENERAL STORE  
RN101182459  
Docket No. 2011-1102-PWS-E**

**Order Type:**  
Default Order

**Findings Order Justification:**  
N/A

**Media:**  
PWS

**Small Business:**  
Yes

**Location(s) Where Violation(s) Occurred:**  
18710 Hamilton Pool Road, Travis County

**Type of Operation:**  
public water system

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

**Texas Register Publication Date:** December 16, 2011

**Comments Received:** None

***Penalty Information***

<b>Total Penalty Assessed:</b>	\$2,788
<b>Total Paid to General Revenue:</b>	\$0
<b>Total Due to General Revenue:</b>	\$2,788

**Compliance History Classifications:**

Person/CN – N/A  
Site/RN – N/A

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

Docket No. 2011-1102-PWS-E

***Investigation Information***

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** June 20, 2011  
**Date(s) of NOV(s):** See Compliance History – Seven related NOVs  
**Date(s) of NOE(s):** June 24, 2011

***Violation Information***

1. Failed to collect routine distribution water samples for coliform analysis, and failed to provide notice to persons served by the Facility regarding the failure to sample [TEX. HEALTH & SAFETY CODE § 341.033(d) and TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B)].
2. Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result, and failed to provide public notice of the failure to collect repeat distribution samples within 24 hours of being notified of a total coliform-positive sample [30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(i) and 290.122(c)(2)(B)].
3. Failed to collect at least five distribution coliform samples the month following a total coliform-positive sample result, and failed to provide notice to persons served by the Facility regarding the failure to sample [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(B)].
4. Failed to collect raw groundwater source E. coli samples from all sources within 24 hours of being notified of the distribution total coliform-positive result, and failed to provide public notification of the failure to collect raw groundwater source E. coli samples [30 TEX. ADMIN. CODE §§ 290.109(c)(4)(B) and 290.122(c)(2)(B)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**  
N/A

**Technical Requirements:**

1. Within 10 days, begin complying with applicable coliform monitoring requirements by collecting routine distribution samples and providing water that meets the provisions regarding microbial contaminants. This provision will be satisfied upon six consecutive months of compliant monitoring and reporting.
2. Within 30 days, update the Facility's operational guidance and begin implementing procedures to ensure that repeat monitoring is conducted when required and all necessary public notifications are provided in a timely manner to customers of the Facility.
3. Within 45 days, submit written certification to demonstrate compliance with Technical Requirement No. 2.
4. Within 195 days, submit written certification to demonstrate compliance with Technical Requirement No. 1.

***Litigation Information***

**Date Petition(s) Filed:** September 30, 2011 (re-filed for service October 11, 2011 and October 27, 2011)  
**Date(s) Green Card(s) Signed:** October 31, 2011  
**Date(s) Answer(s) Filed:** N/A

**Executive Summary – Enforcement Matter – Case No. 41996**  
**SHAUNA LYNN MCGEE LLC D/B/A BERT & ERNIES GENERAL STORE**  
**RN101182459**  
**Docket No. 2011-1102-PWS-E**

***Contact Information***

**TCEQ Attorneys:** Stephanie J. Frazee, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400

**TCEQ Enforcement Coordinator:** Andrea Byington, Water Enforcement Section, (512) 239-2579

**TCEQ Regional Contact:** Carolyn Runyon, Austin Regional Office, (512) 339-2929

**Respondent:** Shauna McGee, Member, Shauna Lynn McGee LLC, 5815 Cynthia Street, San Bernardino, California 92407

**Respondent's Attorney:** N/A

**THIS PAGE INTENTIONALLY LEFT BLANK**



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	27-Jun-2011	<b>Screening</b>	1-Jul-2011	<b>EPA Due</b>	30-Jun-2011
	<b>PCW</b>	21-Sep-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Shauna Lynn McGee LLC dba Bert & Ernie's General Store
<b>Reg. Ent. Ref. No.</b>	RN101182459
<b>Facility/Site Region</b>	11-Austin
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	41996	<b>No. of Violations</b>	4
<b>Docket No.</b>	2011-1102-PWS-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Andrea Byington
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$1,750
---	-------------------	---------

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

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

<b>Compliance History</b>	35.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$612
---------------------------	-------------------	--------------------------------	-------

<b>Notes</b>	Enhancement for seven NOVs with similar violations.
--------------	---

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
--------------------	----	------------------	-------------------	-----

<b>Notes</b>	The Respondent does not meet the culpability criteria.
--------------	--

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
--	-------------------	-----

<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
-------------------------	-------------------	-------------------	-----

Total EB Amounts	\$426	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$405	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$2,362
-----------------------------	-----------------------	---------

<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	18.0%	<b>Adjustment</b>	\$426
---	-------	-------------------	-------

Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Enhancement to recover the avoided costs of compliance.
--------------	---

<b>Final Penalty Amount</b>	\$2,788
-----------------------------	---------

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$2,788
-----------------------------------	-------------------------------	---------

<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
-----------------	----------------	-------------------	-----

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

<b>Notes</b>	Deferral not offered for non-expedited settlement.
--------------	--

<b>PAYABLE PENALTY</b>	\$2,788
------------------------	---------

**Screening Date** 1-Jul-2011

**Docket No.** 2011-1102-PWS-E

**PCW**

**Respondent** Shauna Lynn McGee LLC dba Bert & Ernies Gener.

*Policy Revision 2 (September 2002)*

**Case ID No.** 41996

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101182459

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Andrea Byington

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	7	35%
	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 counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 35%

**>> 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 seven NOVs with similar violations.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 35%

Screening Date 1-Jul-2011

Docket No. 2011-1102-PWS-E

PCW

Respondent Shauna Lynn McGee LLC dba Bert & Ernie's General Store

Policy Revision 2 (September 2002)

Case ID No. 41996

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101182459

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Byington

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B) and Tex. Health & Safety Code § 341.033(d)

Violation Description Failed to collect routine distribution water samples for coliform analysis and failed to provide notice to persons served by the Facility regarding the failure to sample for the month of November 2010.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual					25%
Potential	x				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Failure to properly sample may expose persons served by the Facility to a significant amount of undetected contaminants which would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 1 30 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$250

One monthly event is recommended for the month routine sampling did not occur.

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

Statutory Limit Test

Estimated EB Amount \$30

Violation Final Penalty Total \$398

This violation Final Assessed Penalty (adjusted for limits) \$398

## Economic Benefit Worksheet

**Respondent** Shauna Lynn McGee LLC dba Bert & Ernie's General Store  
**Case ID No.** 41996  
**Req. Ent. Reference No.** RN101182459  
**Media** Public Water Supply  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$25	1-Nov-2010	30-Nov-2010	0.00	\$0	\$25	\$25
Other (as needed)	\$5	1-Dec-2010	28-Feb-2011	1.16	\$0	\$5	\$5

Notes for AVOIDED costs

The one-time avoided costs include the estimated amount necessary to conduct routine monthly monitoring sampling (estimated at \$25 per sample). Other costs include the estimated amount to provide public notice (estimated at \$5 per month), calculated for the month in which routine monitoring sampling and public notification did not occur.

Approx. Cost of Compliance \$30

**TOTAL** \$30

Screening Date 1-Jul-2011

Docket No. 2011-1102-PWS-E

PCW

Respondent Shauna Lynn McGee LLC dba Bert & Ernies General Store

Policy Revision 2 (September 2002)

Case ID No. 41996

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101182459

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Byington

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(3)(A)(i) and 290.122(c)(2)(B)

Violation Description Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result and failed to provide public notice of the failure to collect repeat distribution samples within 24 hours of being notified of a total coliform-positive sample collected during the months of January and February 2011.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0%).

Matrix Notes Failure to collect repeat samples could expose persons served by the Facility to a significant amount of undetected contaminants which would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 2 58 Number of violation days

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event), mark only one with an x.

Violation Base Penalty \$500

Two monthly events are recommended for the months repeat sampling did not occur.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table with columns: Extraordinary, Ordinary, N/A, Before NOV, NOV to EDPRP/Settlement Offer.

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$169

Violation Final Penalty Total \$797

This violation Final Assessed Penalty (adjusted for limits) \$797

## Economic Benefit Worksheet

**Respondent** Shauna Lynn McGee LLC dba Bert & Ernie's General Store  
**Case ID No.** 41996  
**Req. Ent. Reference No.** RN101182459  
**Media** Public Water Supply  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$150	19-Jan-2011	25-Feb-2011	1.02	\$8	\$150	\$158
Other (as needed)	\$10	19-Jan-2011	26-May-2011	1.27	\$1	\$10	\$11

Notes for AVOIDED costs

The avoided costs include the estimated amount to collect a total of six repeat samples (\$25 per sample) and provide public notice for the failure to collect the samples (\$5 per notice), calculated for the months in which no samples were collected and during the period that a public notice was required.

Approx. Cost of Compliance \$160

**TOTAL** \$169

Screening Date 1-Jul-2011

Docket No. 2011-1102-PWS-E

PCW

Respondent Shauna Lynn McGee LLC dba Bert & Ernies General Store

Policy Revision 2 (September 2002)

Case ID No. 41996

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101182459

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Byington

Violation Number 3

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 distribution coliform samples the month following a total coliform-positive sample result for the months of February and March 2011 and failed to provide notice to persons served by the Facility regarding the failure to sample for the month of February 2011.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0%).

Matrix Notes Failure to collect an adequate number of water samples for coliform analysis may expose persons served by the Facility to a significant amount of undetected contaminants which would exceed levels that are protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 2 58 Number of violation days

Table for frequency: daily, weekly, monthly (x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$500

Two monthly events are recommended for the months increased sampling did not occur.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts: 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

Statutory Limit Test

Estimated EB Amount \$163

Violation Final Penalty Total \$797

This violation Final Assessed Penalty (adjusted for limits) \$797

## Economic Benefit Worksheet

**Respondent** Shauna Lynn McGee LLC dba Bert & Ernie's General Store  
**Case ID No.** 41996  
**Req. Ent. Reference No.** RN101182459  
**Media** Public Water Supply  
**Violation No.** 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

### Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$150	28-Feb-2011	31-Mar-2011	1.00	\$8	\$150	\$158
Other (as needed)	\$5	28-Feb-2011	31-May-2011	1.17	\$0	\$5	\$5

Notes for AVOIDED costs

The avoided cost includes the estimated amount necessary to conduct increased monitoring sampling (estimated at \$25 per sample, five samples for February 2011 and one sample for March 2011) and to provide public notice (\$5 per notice), calculated for the months in which all samples were not collected and during the period that a public notice was required.

Approx. Cost of Compliance \$155

**TOTAL** \$163

Screening Date 1-Jul-2011

Docket No. 2011-1102-PWS-E

PCW

Respondent Shauna Lynn McGee LLC dba Bert & Ernie's General Store

Policy Revision 2 (September 2002)

Case ID No. 41996

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101182459

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Byington

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(4)(B) and 290.122(c)(2)(B)

Violation Description Failed to collect raw groundwater source Escherichia coli samples from all sources within 24 hours of being notified of the distribution total coliform-positive result and failed to provide public notification of the failure to collect raw groundwater source Escherichia coli samples for the months of January and February 2011.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (25%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0%). Matrix Notes: Failure to collect triggered source monitoring samples could result in persons served by the Facility being exposed to significant amounts of undetected contaminants, which would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 2 58 Number of violation days

Table with columns: Frequency (daily, weekly, monthly, quarterly, semiannual, annual, single event), mark only one with an x.

Violation Base Penalty \$500

Two monthly events are recommended for the months sampling did not occur.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table with columns: Extraordinary, Ordinary, N/A, Before NOV, NOV to EDPRP/Settlement Offer.

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$64

Violation Final Penalty Total \$797

This violation Final Assessed Penalty (adjusted for limits) \$797

## Economic Benefit Worksheet

**Respondent** Shauna Lynn McGee LLC dba Bert & Ernie's General Store  
**Case ID No.** 41996  
**Req. Ent. Reference No.** RN101182459  
**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)				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]	\$50	20-Jan-2011	25-Feb-2011	1.02	\$3	\$50	\$53
Other (as needed)	\$10	21-Jan-2011	1-Jun-2011	1.28	\$1	\$10	\$11

Notes for AVOIDED costs

The avoided costs include the estimated amount to collect raw groundwater source samples for each active groundwater well (\$25 per sample) calculated for the 24-hour period following the coliform-positive result and during the period public notification was required.

Approx. Cost of Compliance \$60

**TOTAL** \$64

# Compliance History

Customer/Respondent/Owner-Operator: CN603859125 Shauna Lynn McGee LLC Classification: Rating:  
Regulated Entity: RN101182459 BERT & ERNIES GENERAL STORE Classification: Site Rating:  
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2270334  
Location: 18710 HAMILTON POOL RD, TRAVIS COUNTY, TEXAS  
TCEQ Region: REGION 11 - AUSTIN  
Date Compliance History Prepared: July 06, 2011  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: July 01, 2006 to July 01, 2011  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Andrea Byington Phone: (512) 239-2579

## 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 | 06/19/2009 | (743033) |
| 2 | 06/21/2011 | (923570) |
| 3 | 06/21/2011 | (934413) |
| 4 | 06/21/2011 | (934433) |
| 5 | 06/21/2011 | (934438) |
| 6 | 06/21/2011 | (934449) |
| 7 | 06/24/2011 | (934551) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

**Date: 01/04/2011 (923570) CN603859125**  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)  
Description: TCR Routine Monitoring Violation 11/2010 - Failure to collect any routine monitoring sample(s).

**Date: 03/10/2011 (934413) CN603859125**  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(i)  
Description: TCR Repeat Monitoring Violation 01/2011 - Failure to collect all repeats following a coliform found result.

**Date: 03/31/2011 (934438) CN603859125**  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)  
Description: TCR Increase Monitoring Violation 02/2011 - Failure to collect any of the 5 distribution samples following a coliform found month.

**Date: 03/31/2011 (934433) CN603859125**  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(i)  
Description: TCR Repeat Monitoring Violation 02/2011 - Failure to collect all repeats following a coliform found result.

**Date: 04/05/2011 (934433) CN603859125**  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(4)(B)  
Description: GWR Triggered Source Monitoring Violation 02/2011 - Failure to collect any triggered source monitoring sample(s) following a coliform found result for 1 source.

**Date: 04/29/2011 (934449) CN603859125**  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)  
Description: TCR Increase Monitoring Violation 03/2011 - Failure to collect all 5 distribution samples following a coliform found month.

**Date: 05/05/2011 (934413) CN603859125**  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(4)(B)  
Description: GWR Triggered Source Monitoring Violation 01/2011 - Failure to collect any triggered source monitoring sample(s) following a coliform found result for 1 source.

- 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  
SHAUNA LYNN MCGEE LLC  
D/B/A BERT & ERNIES  
GENERAL STORE;  
RN101182459**

§  
§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2011-1102-PWS-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Shauna Lynn McGee LLC d/b/a Bert & Ernies General Store ("Respondent").

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Respondent owns and operates a public water system located at 18710 Hamilton Pool Road in Travis County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately one service connection, and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(66).
2. During a record review conducted on June 20, 2011, a TCEQ Public Drinking Water program investigator documented that Respondent violated the following requirements:
  - a. Failed to collect routine distribution water samples for coliform analysis, and failed to provide notice to persons served by the Facility regarding the failure to sample, for the month of November 2010;
  - b. Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result, and failed to provide public notice of the failure to collect repeat distribution samples within 24 hours of being notified of a total coliform-positive result for the months of January and February 2011;
  - c. Failed to collect at least five distribution coliform samples the month following a total coliform-positive sample result for the months of February and March 2011, and failed to provide notice to persons served by the Facility regarding the failure to sample for the month of February 2011; and

- d. Failed to collect raw groundwater source *Escherichia coli* ("E. coli") samples from all sources within 24 hours of being notified of the distribution total coliform-positive result, and failed to provide public notification of the failure to collect raw groundwater source E. coli samples for the months of January and February 2011.
3. Respondent received notice of the violations on or about June 29, 2011.
4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Shauna Lynn McGee LLC d/b/a Bert & Ernie's General Store" (the "EDPRP") in the TCEQ Chief Clerk's office on September 30, 2011. Service was not successful.
5. The Executive Director re-filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Shauna Lynn McGee LLC d/b/a Bert & Ernie's General Store" (the "EDPRP") in the TCEQ Chief Clerk's office on October 11, 2011. Service was not successful.
6. The Executive Director re-filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Shauna Lynn McGee LLC d/b/a Bert & Ernie's General Store" (the "EDPRP") in the TCEQ Chief Clerk's office on October 27, 2011.
7. By letter dated October 27, 2011, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on October 31, 2011, as evidenced by the signature on the card.
8. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to collect routine distribution water samples for coliform analysis and failed to provide notice to persons served by the Facility regarding the failure to sample, in violation of TEX. HEALTH & SAFETY CODE § 341.033(d) and 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B).

3. As evidenced by Finding of Fact No. 2.b., Respondent failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result and failed to provide public notice of the failure to collect repeat distribution samples within 24 hours of being notified of a total coliform-positive result, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(3)(A)(i) and 290.122(c)(2)(B).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to collect at least five distribution coliform samples the month following a total coliform-positive sample result and failed to provide notice to persons served by the Facility regarding the failure to sample, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(F) and 290.122(c)(2)(B).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to collect raw groundwater source E. coli samples from all sources within 24 hours of being notified of the distribution total coliform-positive result and failed to provide public notification of the failure to collect raw groundwater source E. coli samples, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(4)(B) and 290.122(c)(2)(B).
6. As evidenced by Findings of Fact Nos. 6 and 7, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.104(a).
7. As evidenced by Finding of Fact No. 8, Respondent failed to file a timely answer as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
9. An administrative penalty in the amount of two thousand seven hundred eighty-eight dollars (\$2,788.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049.
10. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### **ORDERING PROVISIONS**

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Respondent is assessed an administrative penalty in the amount of two thousand seven hundred eight-eight dollars (\$2,788.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not

be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.

2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Shauna Lynn McGee LLC d/b/a Bert & Ernie's General Store; Docket No. 2011-1102-PWS-E" to:

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

3. Respondent shall undertake the following technical requirements:
  - a. Within 10 days after the effective date of this Order, Respondent shall begin complying with applicable coliform monitoring requirements by collecting routine 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 consecutive months of compliant monitoring and reporting;
  - b. Within 30 days after the effective date of this Order, Respondent shall update the Facility's operational guidance and begin implementing procedures to ensure that repeat monitoring is conducted when required and all necessary public notifications are provided in a timely manner to customers of the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 290.109 and 290.122;
  - c. Within 45 days after the effective date of this Order, Respondent shall submit written certification as described in Ordering Provision No. 3.e., below, to demonstrate compliance with Ordering Provision No. 3.b.; and
  - d. Within 195 days after the effective date of this Order, Respondent shall submit written certification as described in Ordering Provision No. 3.e., below, to demonstrate compliance with Ordering Provision No. 3.a.
  - e. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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 fine and imprisonment for knowing violations."

Respondent shall submit the written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Public Drinking Water Section Manager  
Water Supply Division, MC 155  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

---

For the Commission

**AFFIDAVIT OF STEPHANIE J. FRAZEE**

**STATE OF TEXAS**

§  
§  
§

**COUNTY OF TRAVIS**

"My name is Stephanie J. Frazee. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

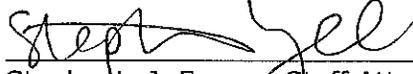
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Shauna Lynn McGee LLC d/b/a Bert & Ernie's General Store" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on September 30, 2011. Service was not successful.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Shauna Lynn McGee LLC d/b/a Bert & Ernie's General Store" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on October 11, 2011. Service was not successful.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Shauna Lynn McGee LLC d/b/a Bert & Ernie's General Store" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on October 27, 2011.

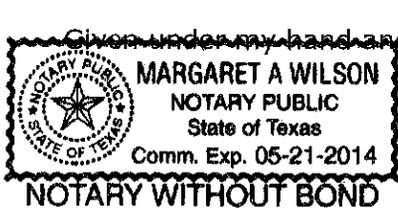
The EDPRP was mailed to Respondent's last known address on October 27, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on October 31, 2011, as evidenced by the signature on the card.

More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."

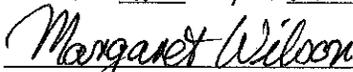


Stephanie J. Frazee, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Stephanie J. Frazee, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.



Given under my hand and seal of office this 21<sup>ST</sup> day of NOVEMBER, A.D. 2011.

  
\_\_\_\_\_  
Notary Signature