

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 11945
SNI Corporation d/b/a Broadway Food Mart
RN101252732
Docket No. 2011-1631-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Indifference to legal duty based on violation of a previous order.

Media:

PWS

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

2682 Highway 71, Columbus, Colorado 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: August 31, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed: \$11,176

Total Paid to General Revenue: \$326

Total Due to General Revenue: \$10,850

Payment Plan: 35 payments of \$310 each

SEP Conditional Offset: N/A

Compliance History Classifications:

Person/CN – Average
Site/RN – Average

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: July 19, 2011

Date(s) of NOV(s): July 27, 2010

Date(s) of NOE(s): August 9, 2011

Violation Information

1. Failed to locate the groundwater sources so there will be no danger of pollution from unsanitary sources [30 TEX. ADMIN CODE § 290.41(c)(1)(A) and TCEQ Agreed Order Docket No. 2004-0043-PWS-E, Ordering Provision No. 2.c].
2. Failed to provide a sanitary control easement for the drinking water well [30 TEX. ADMIN. CODE § 290.41(c)(1)(F) and TCEQ Agreed Order Docket No. 2004-0043-PWS-E, Ordering Provision No. 2.d].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 30 days:
 - a. Submit an administratively complete exception request to the TCEQ to obtain an exception to the rule that requires all underground petroleum storage tanks to be located a minimum of 150 feet away from the groundwater source, and
 - b. Submit an administratively complete exception request to the TCEQ to obtain an exception to the rule that requires a recorded sanitary control easement that covers the land within 150 feet of the drinking water well.
2. Respondent shall respond completely and adequately to all requests for information concerning the rule exception applications within 30 days after the date of such requests, or by any other deadline specified in writing.
3. Within 150 days:
 - a. Either obtain TCEQ approval of the exception requests regarding the proximity of the drinking water well to underground petroleum storage tanks, or
 - b. Locate the drinking water well at the Facility such that it is greater than 150 feet away from all underground petroleum storage tanks; and
 - c. Either obtain TCEQ approval of the exception requests regarding a sanitary control easement, or
 - d. Obtain a sanitary control easement that covers the land within 150 feet of the drinking water well at the Facility and record the easement in the county deed records.
4. Within 165 days, submit written certification to demonstrate compliance with Technical Requirement No. 3

Litigation Information

Date Petition(s) Filed: October 31, 2011
Date Answer(s) Filed: November 16, 2011
SOAH Referral Date: December 19, 2011
Hearing Date(s):
Preliminary hearing: February 9, 2012
Evidentiary hearing: August 9, 2012 (scheduled)
Settlement Date: June 21, 2012

Contact Information

TCEQ Attorneys: Peipey Tang, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Eli Martinez, Public Interest Counsel, (512) 239-6363

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Rebecca Clausewitz, Enforcement Division, (210) 403-4012

TCEQ Regional Contact: Steve Smith, Houston Regional Office, (713) 767-3581

Respondent: Ameena Saleem Bhaidani, Director and President, SNI Corporation, 2682 Highway 71, Columbus, Texas 78934

Respondent's Attorney: Neal Pfeiffer, Attorney at Law, 807 Pecan Street, Bastrop, Texas 78602

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	15-Aug-2011	Screening	29-Aug-2011	EPA Due	
	PCW	9-Sep-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	SNI Corporation dba Broadway Food Mart
Reg. Ent. Ref. No.	RN101252732
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	11945	No. of Violations	2
Docket No.	2011-1631-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Rebecca Clausewitz
		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	\$8,800
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	27.0% Enhancement	Subtotals 2, 3, & 7	\$2,376
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Notes: Enhancement for one NOV with same/similar violations, one NOV with dissimilar violations, and one final agreed enforcement order containing a denial of liability.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$197
Approx. Cost of Compliance	\$700

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,176
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$11,176

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,176
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$11,176
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Screening Date 29-Aug-2011

Docket No. 2011-1631-PWS-E

PCW

Respondent SNI Corporation dba Broadway Food Mart

Policy Revision 2 (September 2002)

Case ID No. 11945

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101252732

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

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>)	1	5%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	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 (<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) 27%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

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

Total Adjustment Percentage (Subtotals 2, 3, & 7) 27%

Screening Date 29-Aug-2011

Docket No. 2011-1631-PWS-E

PCW

Respondent SNI Corporation dba Broadway Food Mart

Policy Revision 2 (September 2002)

Case ID No. 11945

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101252732

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.41(c)(1)(A) and TCEQ Agreed Order Docket No. 2004-0043-PWS-E, Ordering Provision No. 2.c

Violation Description Failed to locate the groundwater sources so there will be no danger of pollution from unsanitary sources. Specifically, it was noted on the date of the record review that the drinking water well is located approximately 88 feet from the underground petroleum storage tank and a rule exception request to the 150-foot distance requirement was denied by the TCEQ on January 27, 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 Locating the well within 150 feet of the underground petroleum storage tank could result in contamination of the well from any leaks or spills of petroleum products from the tank, causing customers and employees of the Facility to be exposed to significant amounts of contaminants, which would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 35 1040 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$8,750

Thirty-five monthly events are recommended, calculated from the effective date of TCEQ Agreed Order Docket No. 2004-0043-PWS-E, October 23, 2008, to the date of case screening, August 29, 2011.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$8,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$141

Violation Final Penalty Total \$11,113

This violation Final Assessed Penalty (adjusted for limits) \$11,113

Economic Benefit Worksheet

Respondent SNI Corporation dba Broadway Food Mart
Case ID No. 11945
Reg. Ent. Reference No. RN101252732
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)	\$500	23-Oct-2008	31-Oct-2012	4.02	\$7	\$134	\$141
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the estimated amount to submit an administratively complete exception request and obtain approval of that request, calculated from the effective date of TCEQ Agreed Order Docket No. 2004-0043-PWS-E, to the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$141

Screening Date 29-Aug-2011

Docket No. 2011-1631-PWS-E

PCW

Respondent SNI Corporation dba Broadway Food Mart

Policy Revision 2 (September 2002)

Case ID No. 11945

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101252732

Media [Statute] Public Water Supply

Enf. Coordinator Rebecca Clausewitz

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 290.41(c)(1)(F) and TCEQ Agreed Order Docket No. 2004-0043-PWS-E, Ordering Provision No. 2.d

Violation Description Failed to provide a sanitary control easement for the well. Specifically, it was noted on the date of the record review that an exception request to the sanitary control easement requirement was denied by the TCEQ on January 27, 2010.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				5%
Potential			x	

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes

Failure to obtain a sanitary control easement could allow activities to occur near the well which could result employees and customers of the Facility being exposed to insignificant amounts of contaminants, which would not exceed levels protective of human health.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 1 1040 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$50

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$50

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$56

Violation Final Penalty Total \$64

This violation Final Assessed Penalty (adjusted for limits) \$64

Economic Benefit Worksheet

Respondent SNI Corporation dba Broadway Food Mart
Case ID No. 11945
Reg. Ent. Reference No. RN101252732
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)	\$200	23-Oct-2008	31-Oct-2012	4.02	\$3	\$54	\$56
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the estimated amount to obtain an exception to the sanitary control easement requirement, calculated from the effective date of TCEQ Agreed Order Docket No. 2004-0043-PWS-E, to the estimated date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

TOTAL

\$56

Compliance History

Customer/Respondent/Owner-Operator:	CN601253594 SNI Corporation	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN101252732 Broadway Food Mart	Classification: AVERAGE	Site Rating: 3.01
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY	REGISTRATION	0450065
	PETROLEUM STORAGE TANK	REGISTRATION	74235
Location:	2682 HWY 71, COLUMBUS, COLORADO COUNTY, TEXAS		
TCEQ Region:	REGION 12 - HOUSTON		
Date Compliance History Prepared:	September 12, 2011		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	September 12, 2006 to September 12, 2011		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
<u>Name:</u>	<u>Rebecca Clausewitz</u>	<u>Phone:</u>	<u>(210) 403-4012</u>

Site Compliance History Components

- | | |
|--|---------------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership/operator of the site during the compliance period? | No |
| 3. If Yes, who is the current owner/operator? | N/A |
| 4. If Yes, who was/were the prior owner(s)/operator(s)? | N/A |
| 5. When did the change(s) in owner or operator occur? | N/A |
| 6. Rating Date: 9/1/2011 | Repeat Violator: NO |

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government:
- Effective Date: 10/23/2008** **ADMINORDER 2004-0043-PWS-E**
- Classification: Minor
- Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)
30 TAC Chapter 290, SubChapter F 290.109(c)(3)
5A THSC Chapter 341, SubChapter A 341.033(d)
- Description: Failure to collect a bacteriological sample for the months of June and September for the year 2001, and April, June, and September for the year 2002. This resulted in monitoring violations for each of these 5 months.
- Classification: Minor
- Citation: 30 TAC Chapter 290, SubChapter F 290.110(d)(3)
- Description: Failure to possess a chlorine test kit which uses the DPD method to determine the free chlorine residual at various locations to ensure the proper chlorine residual is being maintained throughout the distribution system.
- Classification: Moderate
- Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(5)(B)
- Description: Failure to perform at least once every seven days, chlorine residual tests on water collected from various locations within the distribution system.
- Classification: Moderate
- Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(A)
- Rqmt Prov: Ordering Provision No. 2.c. ORDER
- Description: Failure to locate the Facility's well at least 150 feet from an underground petroleum storage tank. Specifically, the well must not be located within 150 feet of a underground fuel storage tank .
- Classification: Moderate
- Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)
- Rqmt Prov: 2004-0043-PWS-E ORDER
- Description: Failure to secure a sanitary control easement covering all property within 150 feet of the water well.
- Classification: Moderate
- Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)
30 TAC Chapter 290, SubChapter F 290.109(c)(3)
5A THSC Chapter 341, SubChapter A 341.033(d)
- Description: Failure to take bacteriological samples at the required frequency.
- Classification: Major
- Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)
30 TAC Chapter 290, SubChapter F 290.109(c)(3)
5A THSC Chapter 341, SubChapter A 341.033(d)
- Description: Failure to take bacteriological samples as required by 30 TAC § 290.109.
- Classification: Major
- Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)
30 TAC Chapter 290, SubChapter F 290.109(c)(3)
5A THSC Chapter 341, SubChapter A 341.033(d)
- Description: Failure to take at least 5 bacteriological samples the month following a positive "coliform found" sample as required by 30 TAC § 290.109.
- Classification: Moderate
- Citation: 30 TAC Chapter 290, SubChapter F 290.122(a)
- Description: Failure to post Public Notices for violations as required by 30 TAC § 290.122.
- Classification: Major
- Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)
30 TAC Chapter 290, SubChapter F 290.109(c)(3)
5A THSC Chapter 341, SubChapter A 341.033(d)
- Description: Failure to take enough repeat samples following a positive "coliform found" sample as required by 30 TAC § 290.109.

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 05/05/2009 (726975)
2 07/27/2010 (842911)
3 08/10/2011 (941773)

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

Date: 02/27/2009 (726975) CN601253594

Self Report? NO Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter F 290.110(d)(3)

Description: Failure to possess a chlorine test kit which uses the DPD method to determine the free chlorine residual at various locations to ensure the proper chlorine residual is being maintained throughout the distribution system.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.118(b)

Description: Failure to provide drinking water above the minimum permissible level for pH which is equal to or greater than 7. The most recent chemical analysis of the water from this system reveals that the pH of 6.6 is below the minimum secondary constituent level.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(5)(B)

Description: Failure to perform at least once every seven days, chlorine residual tests on water collected from various locations within the distribution system.

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.

Date: 07/27/2010 (842911) CN601253594

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(1)(A)

Description: Ordering Provision No. 2.c. ORDER
Failure to locate the Facility's well at least 150 feet from an underground petroleum storage tank. Specifically, the well must not be located within 150 feet of a underground fuel storage tank .

Self Report? NO Classification: Moderate

Citation: 2004-0043-PWS-E ORDER

30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)

Description: Failure to secure a sanitary control easement covering all property within 150 feet of the water well

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
SNI CORPORATION DBA
BROADWAY FOOD MART;
RN101252732**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2011-1631-PWS-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding SNI Corporation d/b/a Broadway Food Mart ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Neal Pfeiffer, Attorney at Law, presented this Agreed Order to the Commission.

Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon 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 2682 Highway 71 in Columbus, Colorado County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately 1 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 July 19, 2011, a TCEQ Central Office investigator documented that Respondent:
 - a. Failed to locate the groundwater sources so there will be no danger of pollution from unsanitary sources. Specifically, the drinking water well is located approximately 88 feet from the underground petroleum storage tank system; and

- b. Failed to provide a sanitary control easement for the drinking water well.
3. Respondent received notice of the violations on or about August 14, 2011

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 locate the groundwater sources so there will be no danger of pollution from unsanitary sources, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(1)(A) and TCEQ Agreed Order Docket No. 2004-0043-PWS-E, Ordering Provision No. 2.c.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to provide a sanitary control easement for the well, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(1)(F) and TCEQ Agreed Order Docket No. 2004-0043-PWS-E, Ordering Provision No. 2.d.
4. 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.
5. An administrative penalty in the amount of eleven thousand one hundred seventy-six dollars (\$11,176.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid three hundred twenty-six dollars (\$326.00) of the administrative penalty. The remaining amount of ten thousand eight hundred fifty dollars (\$10,850.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of three hundred ten dollars (\$310.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 5, above, 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 Agreed Order resolve only the matters set forth by this Agreed Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas

Commission on Environmental Quality" and shall be sent with the notation "Re: SNI Corporation d/b/a Broadway Food Mart, Docket No. 2011-1631-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

2. Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Agreed Order, Respondent shall:
 - i. Submit an administratively complete exception request to the TCEQ, pursuant to 30 TEX. ADMIN. CODE § 290.39(l), to obtain an exception to the rule that requires all underground petroleum storage tanks to be located a minimum of 150 feet away from the groundwater source, as required by 30 TEX. ADMIN. CODE § 290.41; and
 - ii. Submit an administratively complete exception request to the TCEQ, pursuant to 30 TEX. ADMIN. CODE § 290.39(l), to obtain an exception to the rule that requires a recorded sanitary control easement that covers the land within 150 feet of the drinking water well, as required by 30 TEX. ADMIN. CODE § 290.41.

The rule exception requests shall be submitted to:

Technical Review & Oversight Team
Water Supply Division, MC 159
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

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

- b. Respondent shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the rule exception applications within 30 days after the date of such requests, or by any other deadline specified in writing.
- c. Within 150 days after the effective date of the this Agreed Order, Respondent shall:
 - i. Either obtain TCEQ approval of the exception requests to 30 TEX. ADMIN. CODE § 290.41(c)(1)(A) regarding the proximity of the drinking water well to underground petroleum storage tanks; or

- ii. Locate the drinking water well at the Facility such that it is greater than 150 feet away from all underground petroleum storage tanks, in accordance with 30 TEX. ADMIN. CODE § 290.41; and
 - iii. Either obtain TCEQ approval of the exception requests to 30 TEX. ADMIN. CODE § 290.41(c)(1)(F) regarding a sanitary control easement; or
 - iv. Obtain a sanitary control easement that covers the land within 150 feet of the drinking water well at the Facility and record the easement in the county deed records, in accordance with 30 TEX. ADMIN. CODE § 290.41.
- d. Within 165 days after the effective date of this Agreed Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 2.c. The certification shall be notarized by a State of Texas Notary Public and include the following certification language.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification and supporting documentation 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:

Stephen Smith, Water Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

- 3. All relief not expressly granted in this Agreed Order is denied.
- 4. 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.
- 5. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director.

6. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
8. 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.
9. 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.
10. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SNI Corporation d/b/a Broadway Food Mart
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

September 17, 2012
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of SNI Corporation d/b/a Broadway Food Mart, 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.


Signature - Ameena Saleem Bhaidani,
Director, and President
SNI Corporation

06/21/2012
Date