

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 42537
Michael Sesso d/b/a Sessos Country Market
RN105507388
Docket No. 2011-1672-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Absence of management practices designed to ensure compliance.

Media:

PWS

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

7991 West United States Highway 90, Del Rio, Val Verde 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: April 27, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed: \$1,995

Total Paid to General Revenue: \$1,995

Total Due to General Revenue: N/A

SEP Conditional Offset: N/A

Compliance History Classifications:

Person/CN – N/A
Site/RN – N/A

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: August 29, 2011

Date(s) of NOV(s): March 31, 2011; June 3, 2011; July 7, 2011; August 26, 2011

Date(s) of NOE(s): September 2, 2011

Michael Sesso d/b/a Sessos Country Market

RN105507388

Docket No. 2011-1672-PWS-E

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 conduct routine coliform monitoring for the months of February, April, and May 2011 [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B), and TEX. HEALTH & SAFETY CODE § 341.033(d)].
2. Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample for the month of June 2011 [30 TEX. ADMIN. CODE § 290.109(c)(3)(A)(ii)].
3. Failed to collect one raw groundwater source *Escherichia coli* sample from the facility's well within 24 hours of notification of a distribution total coliform-positive sample for the month of June 2011 [30 TEX. ADMIN. CODE § 290.109(c)(4)(B)].

Corrective Actions/Technical Requirements**Corrective Action(s) Completed:**

None

Technical Requirements:

1. Within 10 days:
 - a. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to persons served by the facility; and
 - b. Begin complying with applicable coliform monitoring requirements, including the collection of all routine distribution samples and triggered source monitoring samples when required, 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 25 days, submit written certification demonstrating compliance with Technical Requirement No. 1.a.
3. Within 195 days, submit written certification demonstrating compliance with Technical Requirement No. 1.b.

Litigation Information**Date Petition(s) Filed:** March 12, 2012**Date Answer(s) Filed:** N/A**Settlement Date:** April 4, 2012**Contact Information**

TCEQ Attorneys: Sharesa Y. Alexander, 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:** Andrea Linson, Enforcement Division, (512) 239- 1482**TCEQ Regional Contact:** Elston Johnson, Austin Regional Office, (512) 239-6266**Respondent:** Michael Sesso, 7991 W. US Highway 90, Del Rio, Texas 78840**Respondent's Attorney:** N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	6-Sep-2011	Screening	13-Sep-2011	EPA Due	30-Sep-2011
	PCW	13-Sep-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	Michael Sesso dba Sessos Country Market
Reg. Ent. Ref. No.	RN105507388
Facility/Site Region	16-Laredo
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	42537	No. of Violations	3
Docket No.	2011-1672-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Andrea Linson
		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	\$1,250
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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	42.0% Enhancement	Subtotals 2, 3, & 7	\$525
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Notes: Enhancement for four NOV's with same/similar violations, one NOV with dissimilar violations, and one 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	\$224	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$315	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,775
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OTHER FACTORS AS JUSTICE MAY REQUIRE	12.4%	Adjustment	\$220
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement for the recovery of avoided costs associated with Violation Nos. 1, 2 and 3.

Final Penalty Amount	\$1,995
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,995
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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	\$1,995
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Screening Date 13-Sep-2011

Docket No. 2011-1672-PWS-E

PCW

Respondent Michael Sesso dba Sessos Country Market

Policy Revision 2 (September 2002)

Case ID No. 42537

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105507388

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson

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>)	4	20%
	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) 42%

>> 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 four NOVs with same/similar violations, one NOV with dissimilar violations, and one order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 42%

Screening Date 13-Sep-2011

Docket No. 2011-1672-PWS-E

PCW

Respondent Michael Sesso dba Sessos Country Market

Policy Revision 2 (September 2002)

Case ID No. 42537

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105507388

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson

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 conduct routine coliform monitoring for the months of February, April and May 2011.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Failure to perform routine coliform monitoring and failure to provide notice 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 3 89 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$750

Three monthly events are recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$99

Violation Final Penalty Total \$1,197

This violation Final Assessed Penalty (adjusted for limits) \$1,197

Economic Benefit Worksheet

Respondent Michael Sesso dba Sessos Country Market
Case ID No. 42537
Req. Ent. Reference No. RN105507388
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)	\$100	29-Aug-2011	30-Apr-2012	0.67	\$3	n/a	\$3

Notes for DELAYED costs

The delayed cost includes the estimated amount to develop a protocol to ensure all necessary public notifications are provided in a timely manner, calculated from the record review date 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]	\$75	28-Feb-2011	31-May-2011	1.17	\$4	\$75	\$79
Other (as needed)	\$15	1-Mar-2011	31-Aug-2011	1.42	\$1	\$15	\$16

Notes for AVOIDED costs

The avoided costs include the estimated amount (\$25 x 3 samples) to conduct routine coliform sampling and provide public notification (\$5 per notification) of the failure to sample, calculated for the months sampling was not conducted and the period that a public notice was required.

Approx. Cost of Compliance

\$190

TOTAL

\$99

Screening Date 13-Sep-2011

Docket No. 2011-1672-PWS-E

PCW

Respondent Michael Sesso dba Sessos Country Market

Policy Revision 2 (September 2002)

Case ID No. 42537

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105507388

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 290.109(c)(3)(A)(ii)

Violation Description Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample for the month of June 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 perform repeat coliform monitoring 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 1 30 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 \$250

One monthly event is recommended.

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 \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$100

Violation Final Penalty Total \$399

This violation Final Assessed Penalty (adjusted for limits) \$399

Economic Benefit Worksheet

Respondent Michael Sesso dba Sessos Country Market
Case ID No. 42537
Req. Ent. Reference No. RN105507388
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]	\$100	30-Jun-2011	1-Jul-2011	0.00	\$0	\$100	\$100
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided costs include the estimated amount to collect a total of four repeat samples (\$25 per sample), calculated for the 24-hour period after the coliform-positive result.

Approx. Cost of Compliance \$100

TOTAL \$100

Screening Date 13-Sep-2011

Docket No. 2011-1672-PWS-E

PCW

Respondent Michael Sesso dba Sessos Country Market

Policy Revision 2 (September 2002)

Case ID No. 42537

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105507388

Media [Statute] Public Water Supply

Enf. Coordinator Andrea Linson

Violation Number 3

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

Violation Description Failed to collect one raw groundwater source Escherichia coli sample from the Facility's well within 24 hours of notification of a distribution total coliform positive sample for the month of June 2011.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0%
Failure to collect a triggered source monitoring sample could result in persons served by the Facility being exposed to significant amounts of undetected contaminants, including Escherichia coli, 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.

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 \$25

Violation Final Penalty Total \$399

This violation Final Assessed Penalty (adjusted for limits) \$399

Economic Benefit Worksheet

Respondent Michael Sesso dba Sessos Country Market
Case ID No. 42537
Req. Ent. Reference No. RN105507388
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]	\$25	30-Jun-2011	1-Jul-2011	0.00	\$0	\$25	\$25
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The one-time avoided cost includes the estimated amount to conduct triggered source monitoring of the drinking water at the Facility (\$25 per sample), calculated for the 24-hour period after the coliform-positive result.

Approx. Cost of Compliance \$25

TOTAL \$25

Compliance History

Customer/Respondent/Owner-Operator: CN603351743 SESSO, MICHAEL Classification: Rating:
Regulated Entity: RN105507388 SESSOS COUNTRY MARKET Classification: Site Rating:
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2330061
Location: 7991 WEST UNITED STATES HIGHWAY 90, VAL VERDE COUNTY, TEXAS
TCEQ Region: REGION 16 - LAREDO
Date Compliance History Prepared: September 13, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: September 06, 2006 to September 06, 2011

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

Name: Andrea Linson Phone: (512) 239-1482

Site Compliance History Components

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

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.

Effective Date: 01/28/2010

ADMINORDER 2009-1213-PWS-E

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.45(d)(2)(A)(ii)
5A THSC Chapter 341, SubChapter A 341.0315(c)

Description: Failure to provide a pressure tank capacity of ten gallons per unit with a minimum of 220 gallons.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(A)

Description: Failure to submit a copy of the well completion data before placing the well into service as a public water system.

Classification: Minor

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

Description: Failure to provide a sanitary control easement for the well.

Classification: Minor

Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(B)

Description: Failure to extend the well casing a minimum of 18 inches above the elevation of the floor of the pump room and a minimum of one inch above the sealing block.

Classification: Moderate

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

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

Classification: Moderate

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

Description: Failure to maintain a record of the volume of water treated weekly for systems serving fewer than 250 connections and 750 people.

Classification: Moderate

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

Description: Failure to annually inspect the pressure tank.

Classification: Moderate

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

Description: Failure to measure the free chlorine residual in the distribution with a colorimeter, spectrophotometer, or color comparator test kit to a minimum accuracy of 0.1 mg/L using Amperometric titration, DPD Ferrous titration, or DPD colorimetric method.

- 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. (CEEDS Inv. Track. No.)

1	07/17/2009	(748119)
2	08/29/2011	(951162)
3	08/30/2011	(951404)
4	08/30/2011	(951425)
5	08/30/2011	(951430)
6	09/02/2011	(951575)

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

Date: 05/06/2008 (656999)

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.46(d)(2)(A)
Description: Failure to provide a minimum disinfectant residual of 0.2 mg/L.
Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 290, SubChapter D 290.45(d)(2)(A)(ii)
5A THSC Chapter 341, SubChapter A 341.0315(c)
Description: Failure to provide a pressure tank capacity of ten gallons per unit with a minimum of 220 gallons.
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(A)
Description: Failure to submit a copy of the well completion data before placing the well into service as a public water system.

Date: 03/31/2011 (951162) CN603351743

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 02/2011 - Failure to collect any routine monitoring sample(s).
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 02/2011 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 06/03/2011 (951404) CN603351743

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 04/2011 - Failure to collect any routine monitoring sample(s).
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 04/2011 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 07/07/2011 (951425) CN603351743

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
Description: TCR Routine Monitoring Violation 05/2011 - Failure to collect any routine monitoring sample(s).
Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)(B)
Description: TCR PN Routine Monitoring Violation 05/2011 - Failure to post public notice for not collecting any routine monitoring sample(s).

Date: 08/26/2011 (951430) CN603351743

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(3)(A)(ii)
Description: TCR Repeat Monitoring Violation 06/2011 - Failure to collect any repeats following a coliform found result.

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
MICHAEL SESSO D/B/A SESSOS
COUNTRY MARKET;
RN105507388**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2011-1672-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 Michael Sesso d/b/a Sessos Country Market ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent presented this Agreed Order to the Commission.

Respondent understands that he 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 7991 West United States Highway 90 in Del Rio, Val Verde County, Texas (the "Facility"). The Facility provides water for human consumption, has 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 August 29, 2011, a TCEQ Austin Regional Office investigator documented that Respondent:
 - 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 conduct routine coliform monitoring for the months of February, April and May 2011;

- b. Failed to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine sample for the month of June 2011; and
 - c. Failed to collect one raw groundwater source *Escherichia coli* sample from the Facility's well within 24 hours of notification of a distribution total coliform-positive sample for the month of June 2011.
3. Respondent received notice of the violations on or about September 7, 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 collect routine distribution water samples for coliform analysis and failed to provide notice to persons served by the Facility regarding the failure to conduct routine coliform monitoring for the months of February, April and May 2011, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B), and TEX. HEALTH & SAFETY CODE § 341.033(d).
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 on a routine sample for the month of June 2011, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(3)(A)(ii).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to collect one raw groundwater source *Escherichia coli* sample from the Facility's well within 24 hours of notification of a distribution total coliform-positive sample for the month of June 2011, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(4)(B).
5. 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.
6. An administrative penalty in the amount of one thousand nine hundred ninety-five dollars (\$1,995.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid one hundred ninety-five dollars (\$195.00) of the administrative penalty. The remaining amount of one thousand eight hundred dollars (\$1,800.00) of the administrative penalty shall be payable in eighteen (18) monthly payments of one hundred dollars (\$100.00) 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. 6, 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: Michael Sesso d/b/a Sessos Country Market, Docket No. 2011-1672-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 10 days after the effective date of this Agreed Order, Respondent shall:
 - i. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to persons served by the Facility, in accordance with 30 TEX. ADMIN. CODE § 290.122; and
 - ii. Begin complying with applicable coliform monitoring requirements, including the collection of all routine distribution samples and triggered source monitoring samples when required, 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 at the Facility.
 - b. Within 25 days after the effective date of this Agreed Order, Respondent shall submit written certification, in accordance with Ordering Provision No. 2.d., below, to demonstrate compliance with Ordering Provision No. 2.a.i.
 - c. Within 195 days after the effective date of this Agreed Order, Respondent shall submit written certification, in accordance with Ordering Provision No. 2.d., below, to demonstrate compliance with Ordering Provision No. 2.a.ii.
 - d. 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:

Elston Johnson, Public Drinking Water Program, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Signature]
For the Executive Director

June 22 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 Michael Sesso d/b/a Sessos Country Market, 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.

Michael Sesso
Signature - Michael Sesso, Owner
Sessos Country Market

4-4-12
Date