

Executive Summary – Enforcement Matter – Case No. 45033
Gary Wayne Ashby dba Brady's Great BBQ
RN101230241
Docket No. 2012-1918-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

Media:

PWS

Small Business:

No

Location(s) Where Violation(s) Occurred:

Brady's Great BBQ, 703 Farm-to-Market Road 1585, Lubbock, Lubbock County

Type of Operation:

Restaurant with a public water supply

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: January 25, 2013

Comments Received: No

Penalty Information

Total Penalty Assessed: \$2,904

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$2,904

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Unclassified

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: \$72

Applicable Penalty Policy: September 2002 and September 2011

Executive Summary – Enforcement Matter – Case No. 45033
Gary Wayne Ashby dba Brady's Great BBQ
RN101230241
Docket No. 2012-1918-PWS-E

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: August 20, 2012

Date(s) of NOE(s): August 24, 2012

Violation Information

1. Failed to collect routine distribution water samples for coliform [30 TEX. ADMIN. CODE § 290.109(c)(2)(A)(i) and TEX. HEALTH & SAFETY CODE § 341.033(d)].
2. Failed to timely provide the results of quarterly nitrate/nitrite monitoring to the Executive Director [30 TEX. ADMIN. CODE § 290.106(e)].
3. Failed to pay all annual PHS fees, for fiscal year 2012, including any associated late fees and penalties, for TCEQ Financial Administration Account No. 91520209 [30 TEX. ADMIN. CODE § 290.51(a)(6) and TEX. WATER CODE § 5.702].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

On November 7, 2012, Respondent submitted the nitrate/nitrite monitoring results for the first and second quarters of 2012.

Technical Requirements:

The Order will require Respondent to:

- a. 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.
- b. Within 30 days:
 - i. Implement improvements to the Facility's process procedures, guidance, training, and/or oversight to ensure that future drinking water chemical sample results are released by the Facility's laboratories and reported to the Executive Director within 10 days of Executive Director request or of their receipt by the Facility, whichever is later.
 - ii. Submit payment for all outstanding fees, interest, and penalties, including any associated late fees and interest for TCEQ Financial Administration Account No. 91520209.
- c. Within 45 days, submit written certification demonstrating compliance with b.i.
- d. Within 195 days, submit written certification demonstrating compliance.

**Executive Summary – Enforcement Matter – Case No. 45033
Gary Wayne Ashby dba Brady's Great BBQ
RN101230241
Docket No. 2012-1918-PWS-E**

Litigation Information

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

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Epifanio Villarreal, Enforcement Division,
Enforcement Team 2, MC R-14, (361) 825-3425; Debra Barber, Enforcement Division,
MC 219, (512) 239-0412
TCEQ SEP Coordinator: N/A
Respondent: Gary Wayne Ashby, Owner, Brady's Great BBQ, 8506 Oxford Avenue,
Lubbock, Texas 79423
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned PCW	4-Sep-2012	Screening	20-Sep-2012	EPA Due	30-Sep-2011
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RESPONDENT/FACILITY INFORMATION

Respondent	Gary Wayne Ashby dba Brady's Great BBQ		
Reg. Ent. Ref. No.	RN101230241		
Facility/Site Region	2-Lubbock	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	45033	No. of Violations	2
Docket No.	2012-1918-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Bridgett Lee
		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** **\$770**

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** **\$207**

Notes: Enhancement for five NOV's with the same/similar violations and one NOV with dissimilar violations.

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

Notes: The Respondent does not meet the culpability criteria.

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

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

Total EB Amounts \$150
Approx. Cost of Compliance \$275
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$977**

OTHER FACTORS AS JUSTICE MAY REQUIRE **13.8%** **Adjustment** **\$135**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement for the cost of compliance associated with violation no. 2.

Final Penalty Amount **\$1,112**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$1,184**

DEFERRAL **0.0%** Reduction **Adjustment** **\$0**

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

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY **\$1,184**

Screening Date 20-Sep-2012

Docket No. 2012-1918-PWS-E

PCW

Respondent Gary Wayne Ashby dba Brady's Great BBQ

Policy Revision 3 (September 2011)

Case ID No. 45033

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101230241

Media [Statute] Public Water Supply

Enf. Coordinator Bridgett Lee

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>)	5	25%
	Other written NOVs	1	2%
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%

Please Enter Yes or No

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

Adjustment Percentage (Subtotal 2) 27%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for five NOVs with the same/similar violations and one NOV with dissimilar violations.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 27%

Screening Date 20-Sep-2012

Docket No. 2012-1918-PWS-E

PCW

Respondent Gary Wayne Ashby dba Brady's Great BBQ

Policy Revision 3 (September 2011)

Case ID No. 45033

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101230241

Media [Statute] Public Water Supply

Enf. Coordinator Bridgett Lee

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.106(e)

Violation Description Failed to timely provide the results of quarterly nitrate/nitrite monitoring to the Executive Director. Specifically, the Respondent did not timely provide the nitrate/nitrite monitoring results for the first and second quarters of 2012.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (0.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (1.0%). Includes Matrix Notes: 30% of the rule requirement was not met.

Adjustment \$990

\$10

Violation Events

Number of Violation Events 2 Number of violation days 180

Table for marking violation frequency: daily, weekly, monthly, quarterly, semiannual, annual, single event. 'X' is marked in the 'single event' row.

Violation Base Penalty \$20

Two single events are recommended.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDPRP/Settlement Offer \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A. 'X' is marked in the 'N/A' row.

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

Violation Subtotal \$20

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$15

Violation Final Penalty Total \$29

This violation Final Assessed Penalty (adjusted for limits) \$100

Economic Benefit Worksheet

Respondent Gary Wayne Ashby dba Brady's Great BBQ
Case ID No. 45033
Reg. Ent. Reference No. RN101230241
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
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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	\$50	31-Mar-2012	7-Nov-2012	0.61	\$2	n/a	\$2
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$100	20-Aug-2010	30-Apr-2013	2.70	\$13	n/a	\$13

Notes for DELAYED costs

The delayed cost includes the estimated amount of outstanding laboratory fees so that the lab will release the nitrate/nitrite sampling results so that the Respondent can provide them to the Executive Director. The date required is the last date of the first monitoring period in which nitrate results were not provided and the final date is the compliance date. The other delayed cost includes the estimated amount to implement improvements to the Facility's process procedures, guidance, training, and/or oversight to ensure that future drinking water chemical sample results are released by the Facility's laboratories and reported to the Executive Director, calculated from the date of the record review 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 \$150

TOTAL \$15

Screening Date 20-Sep-2012

Docket No. 2012-1918-PWS-E

PCW

Respondent Gary Wayne Ashby dba Brady's Great BBQ

Policy Revision 3 (September 2011)

Case ID No. 45033

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101230241

Media [Statute] Public Water Supply

Enf. Coordinator Bridgett Lee

Violation Number 2

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

Violation Description

Failed to collect routine distribution water samples for coliform analysis for the months of September 2011, November 2011, December 2011, March 2012, and May 2012.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Failure to collect routine coliform samples could expose customers of the Facility to undetected contaminants, which would exceed levels protective of human health.

Adjustment \$850

\$150

Violation Events

Number of Violation Events 5

153 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$750

Five monthly events are recommended (based on the months the required samples were not collected).

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 \$135

Violation Final Penalty Total \$1,084

This violation Final Assessed Penalty (adjusted for limits) \$1,084

Economic Benefit Worksheet

Respondent Gary Wayne Ashby dba Brady's Great BBQ

Case ID No. 45033

Reg. Ent. Reference No. RN101230241

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
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No commas or \$

Delayed Costs

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

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$125	1-Sep-2011	31-May-2012	1.67	\$10	\$125	\$135
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount necessary to conduct routine coliform sampling (\$25/sample x 5 samples), calculated for the months sampling was not conducted.

Approx. Cost of Compliance

\$125

TOTAL

\$135



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned PCW	4-Sep-2012	Screening	20-Sep-2012	EPA Due	30-Sep-2011
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RESPONDENT/FACILITY INFORMATION

Respondent	Gary Wayne Ashby dba Brady's Great BBQ		
Reg. Ent. Ref. No.	RN101230241		
Facility/Site Region	2-Lubbock	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	45033	No. of Violations	2
Docket No.	2012-1918-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Bridgett Lee
		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**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

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

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Notes

PAYABLE PENALTY

Screening Date 20-Sep-2012

Docket No. 2012-1918-PWS-E

PCW

Respondent Gary Wayne Ashby dba Brady's Great BBQ

Policy Revision 2 (September 2002)

Case ID No. 45033

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101230241

Media [Statute] Public Water Supply

Enf. Coordinator Bridgett Lee

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>)	5	25%
	Other written NOVs	1	2%
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) 27%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for five NOVs with the same/similar violations and one NOV with dissimilar violations.

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

Screening Date 20-Sep-2012

Docket No. 2012-1918-PWS-E

PCW

Respondent Gary Wayne Ashby dba Brady's Great BBQ

Policy Revision 2 (September 2002)

Case ID No. 45033

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101230241

Media [Statute] Public Water Supply

Enf. Coordinator Bridgett Lee

Violation Number 1

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

Violation Description Failed to collect routine distribution water samples for coliform analysis for the months of March 2011 through July 2011.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes Failure to collect routine coliform samples could expose customers of the Facility to undetected contaminants which would exceed levels protective of human health.

Adjustment \$750

\$250

Violation Events

Number of Violation Events 5 Number of violation days 153

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

Violation Base Penalty \$1,250

Five monthly events are recommended (based on the months the required samples were not collected).

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

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

Violation Subtotal \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$133

Violation Final Penalty Total \$1,721

This violation Final Assessed Penalty (adjusted for limits) \$1,721

Economic Benefit Worksheet

Respondent Gary Wayne Ashby dba Brady's Great BBQ

Case ID No. 45033

Reg. Ent. Reference No. RN101230241

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
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No commas or \$

Delayed Costs

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

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$125	1-Mar-2011	31-Jul-2011	1.33	\$8	\$125	\$133
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount necessary to conduct routine coliform sampling (\$25/sample x 5 samples), calculated for the months sampling was not conducted.

Approx. Cost of Compliance

\$125

TOTAL

\$133

Screening Date 20-Sep-2012

Docket No. 2012-1918-PWS-E

PCW

Respondent Gary Wayne Ashby dba Brady's Great BBQ

Policy Revision 2 (September 2002)

Case ID No. 45033

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101230241

Media [Statute] Public Water Supply

Enf. Coordinator Bridgett Lee

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 290.51(a)(6) and Tex. Water Code § 5.702

Violation Description Failed to pay all annual Public Health Service Fees, for fiscal year 2012, including any associated late fees and penalties, for TCEQ Financial Administration Account No. 91520209.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (0%).

>> Programmatic Matrix

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

Matrix Notes

Adjustment \$1,000

\$0

Violation Events

Number of Violation Events [] Number of violation days []

mark only one with an x

- daily []
weekly []
monthly []
quarterly []
semiannual []
annual []
single event []

Violation Base Penalty \$0

All penalties and interest will be determined by the Financial Administration Division at the next billing cycle.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

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

Notes

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

Violation Subtotal \$0

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$0

This violation Final Assessed Penalty (adjusted for limits) \$0

Economic Benefit Worksheet

Respondent Gary Wayne Ashby dba Brady's Great BBQ
Case ID No. 45033
Reg. Ent. Reference No. RN101230241
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
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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

N/A

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

N/A

Approx. Cost of Compliance

\$0

TOTAL

\$0



Compliance History Report

PENDING Compliance History Report for CN603800426, RN101230241, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator:	CN603800426, Gary Wayne Ashby	Classification:	UNCLASSIFIED	Rating:	-----
Regulated Entity:	RN101230241, BRADYS GREAT BBQ	Classification:	NOT APPLICABLE	Rating:	N/A
Complexity Points:	N/A	Repeat Violator:	NO		
CH Group:	14 - Other				
Location:	703 FM 1585 LUBBOCK, TX 79423-6555, LUBBOCK COUNTY				
TCEQ Region:	REGION 02 - LUBBOCK				
ID Number(s):	PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1520209				

Compliance History Period:	September 01, 2007 to August 31, 2012	Rating Year:	2012	Rating Date:	09/01/2012
Date Compliance History Report Prepared:	September 20, 2012				
Agency Decision Requiring Compliance History:	Enforcement				
Component Period Selected:	September 20, 2007 to September 20, 2012				
TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.					
Name:	Bridgett Lee			Phone:	(512) 239-2565

Site and Owner/Operator History:

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

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:
N/A

B. Criminal convictions:
N/A

C. Chronic excessive emissions events:
N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):
N/A

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

1	Date:	11/17/2011 (1028222)	CN603800426
	Self Report?	NO	Classification: Moderate
	Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) 30 TAC Chapter 290, SubChapter F 290.109(f)(5)	

	Description:	30 TAC Chapter 290, SubChapter F 290.109(f)(7) TCR Routine Monitoring Violation 09/2011 - Failure to collect any routine monitoring sample.
2	Date: 02/29/2012 (1028222)	CN603800426
	Self Report?	NO Classification: Moderate
	Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) 30 TAC Chapter 290, SubChapter F 290.109(f)(5) 30 TAC Chapter 290, SubChapter F 290.109(f)(7)
	Description:	TCR Routine Monitoring Violation 11/2011 - Failure to collect any routine monitoring samples.
3	Date: 03/15/2012 (1028222)	CN603800426
	Self Report?	NO Classification: Moderate
	Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) 30 TAC Chapter 290, SubChapter F 290.109(f)(5) 30 TAC Chapter 290, SubChapter F 290.109(f)(7)
	Description:	TCR Routine Monitoring Violation 12/2011 - Failure to collect any routine monitoring samples.
4	Date: 05/07/2012 (1028222)	CN603800426
	Self Report?	NO Classification: Moderate
	Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) 30 TAC Chapter 290, SubChapter F 290.109(f)(5) 30 TAC Chapter 290, SubChapter F 290.109(f)(7)
	Description:	TCR Routine Monitoring Violation 03/2012 - Failure to collect any routine monitoring samples.
5	Date: 06/29/2012 (1014763)	CN603800426
	Self Report?	NO Classification: Moderate
	Citation:	30 TAC Chapter 290, SubChapter D 290.45(d)(2)(A)(ii)
	Description:	Failure to provide the minimum required pressure tank capacity.
	Self Report?	NO Classification: Moderate
	Citation:	30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O) 30 TAC Chapter 290, SubChapter D 290.43(e)
	Description:	Failure to secure the pressure tanks in a lockable building.
	Self Report?	NO Classification: Moderate
	Citation:	30 TAC Chapter 290, SubChapter D 290.41(c)(3)(J)
	Description:	Failure to provide a concrete sealing block which extends at least three (3) feet from the well casing in all directions.
	Self Report?	NO Classification: Minor
	Citation:	30 TAC Chapter 290, SubChapter D 290.41(c)(1)(F)
	Description:	Failure to have a sanitary control easement related to the well.
	Self Report?	NO Classification: Moderate
	Citation:	30 TAC Chapter 290, SubChapter D 290.46(f)
	Description:	Failure to maintain water works operation and maintenance records.
6	Date: 07/23/2012 (1028222)	CN603800426
	Self Report?	NO Classification: Moderate
	Citation:	30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i) 30 TAC Chapter 290, SubChapter F 290.109(f)(5) 30 TAC Chapter 290, SubChapter F 290.109(f)(7)
	Description:	TCR Routine Monitoring Violation 05/2012 - Failure to collect any routine monitoring samples.

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

Pending Compliance History Report for CN603800426, RN101230241, Rating Year 2012 which includes Compliance History (CH) components from September 20, 2007, through September 20, 2012.

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	
GARY WAYNE ASHBY DBA BRADY'S	§	TEXAS COMMISSION ON
GREAT BBQ	§	
RN101230241	§	ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2012-1918-PWS-E

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Gary Wayne Ashby dba Brady's Great BBQ ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341 and TEX. WATER CODE ch. 5. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The 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, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement 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 the Respondent.

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

I. FINDINGS OF FACT

1. The Respondent owns and operates a restaurant with public water supply at 703 Farm-to-Market Road 1585 in Lubbock, Lubbock County, Texas (the "Facility") that has approximately 1 service connection and serves at least 25 people per day for at least 60 days per year.
2. During a record review conducted on August 20, 2012, TCEQ staff documented that the Respondent did not collect routine distribution water samples for coliform analysis for the months of March 2011 through July 2011, September, November and December 2011, and March and May 2012.
3. During a record review conducted on August 20, 2012, TCEQ staff documented that the Respondent did not timely provide the nitrate/nitrite monitoring results for the first and second quarters of 2012.
4. During a record review conducted on September 20, 2012, TCEQ staff documented that the Respondent did not pay annual Public Health Service fees ("PHS") for fiscal year 2012, including any associated late fees and penalties for TCEQ Financial Administration Account No. 91520209.
5. The Respondent received notice of the violations on August 29, 2012.
6. The Executive Director recognizes that the Respondent submitted the nitrate/nitrite monitoring results for the first and second quarters of 2012 on November 7, 2012.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and TEX. WATER CODE ch. 5 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, the Respondent failed to collect routine distribution water samples for coliform, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(2)(A)(i) and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. As evidenced by Findings of Fact No. 3, the Respondent failed to timely provide the results of quarterly nitrate/nitrite monitoring to the Executive Director, in violation of 30 TEX. ADMIN. CODE § 290.106(e).
4. As evidenced by Findings of Fact No. 4, the Respondent failed to pay all annual PHS fees, for fiscal year 2012, including any associated late fees and penalties, for TCEQ Financial Administration Account No. 91520209, in violation of 30 TEX. ADMIN. CODE § 290.51(a)(6) and TEX. WATER CODE § 5.702.

5. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code 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 Two Thousand Nine Hundred Four Dollars (\$2,904) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The Respondent has paid the Two Thousand Nine Hundred Four Dollar (\$2,904) administrative penalty.

III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Two Thousand Nine Hundred Four Dollars (\$2,904) as set forth in Section II, Paragraph 6 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Gary Wayne Ashby dba Brady's Great BBQ, Docket No. 2012-1918-PWS-E" to:

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

2. The Respondent shall undertake the following technical requirements:
 - a. Within 10 days after the effective date of this Agreed Order, 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 Agreed Order:

- i. Implement improvements to the Facility's process procedures, guidance, training, and/or oversight to ensure that future drinking water chemical sample results are released by the Facility's laboratories and reported to the Executive Director within 10 days of Executive Director request or of their receipt by the Facility, whichever is later, in accordance with 30 TEX. ADMIN. CODE § 290.106 (Inorganic Contaminants).
- ii. Submit payment for all outstanding fees, interest, and penalties, including any associated late fees and interest for TCEQ Financial Administration Account No. 91520209. The payment shall be sent with the notation "Re: Gary Wayne Ashby dba Brady's Great BBQ, Account No. 91520209 to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 1308
Austin, Texas 78711-3088

- c. Within 45 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.d. below and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.b.i.
- d. Within 195 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. 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 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:

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

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. 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 the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
6. 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.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. 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.

9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pam Jari
For the Executive Director

2/18/13
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Gary Wayne Ashby dba Brady's Great BBQ. I am authorized to agree to the attached Agreed Order on behalf of Gary Wayne Ashby dba Brady's Great BBQ, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Gary Wayne Ashby dba Brady's Great BBQ waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions;
- and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Gary Ashby
Signature

12-7-12
Date

Gary Wayne Ashby
Name (Printed or typed)
Authorized Representative of
Gary Wayne Ashby dba Brady's Great BBQ

Owner
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section III, Paragraph 1 of this Agreed Order.