

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 44313  
BRUSH COUNTRY DEVELOPMENT CORPORATION  
RN106103765  
Docket No. 2012-1188-PWS-E

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Three or more enforcement actions (7 NOVs, 1 Order) over the prior five year period for the same violations.

**Media:**

PWS

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

5087 Texas Highway 44, Freer, Duval County

**Type of Operation:**

public water supply

**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:** March 15, 2013

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$3,669

**Total Paid to General Revenue:** \$169

**Total Due to General Revenue:** \$3,500

Payment Plan: 35 payments of \$100

**Compliance History Classifications:**

Person/CN – N/A

Site/RN – N/A

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2002 (PCW 1)  
September 2011 (PCW 2)

**Investigation Information**

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** April 16, 2012  
**Date(s) of NOV(s):** See Compliance History - 7 related NOVs  
**Date(s) of NOE(s):** April 23, 2012

**Violation Information**

1. Failed to collect routine distribution water samples for coliform analysis for the months of April 2011 through August 2011 [TEX. HEALTH & SAFETY CODE § 341.033(d) and 30 TEX. ADMIN. CODE § 290.109(c)(2)(A)(i)].
2. Failed to collect routine distribution water samples for coliform analysis for the months of September 2011 through February 2012 [TEX. HEALTH & SAFETY CODE § 341.033(d) and 30 TEX. ADMIN. CODE § 290.109(c)(2)(A)(i)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

Respondent has demonstrated ten consecutive months of compliant sampling.

**Technical Requirements:**

N/A

**Litigation Information**

**Date Petition(s) Filed:** October 2, 2012  
**Date Answer(s) Filed:** October 16, 2012  
**SOAH Referral Date:** November 26, 2012  
**Hearing Date(s):**  
Preliminary Hearing: January 1, 2013 (*waived*)  
Evidentiary Hearing: May 16, 2013 (*scheduled*)  
**Settlement Date:** February 11, 2013

**Contact Information**

**TCEQ Attorneys:** Jacquelyn Boutwell, 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:** Katy Schumann, Enforcement Division, (512) 239-2602

**TCEQ Regional Contact:** Arnaldo Lanese, Laredo Regional Office, (512) 239-6266

**Respondent Contact:** William Humiston, President, BRUSH COUNTRY DEVELOPMENT CORPORATION, 400 Main Street Suite 708, Corpus Christi, Texas 78401-2050

**Respondent's Attorney:** Kim Cox, 701 Ayers Street, Corpus Christi, Texas 78404



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	7-May-2012	Screening	22-May-2012	EPA Due	30-Jun-2012
	PCW	19-Jun-2012				

**RESPONDENT/FACILITY INFORMATION**

Respondent	BRUSH COUNTRY DEVELOPMENT CORPORATION		
Reg. Ent. Ref. No.	RN106103765		
Facility/Site Region	16-Laredo	Major/Minor Source	Minor

**CASE INFORMATION**

Enf./Case ID No.	44313	No. of Violations	1
Docket No.	2012-1188-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Katy Schumann
		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

**Penalty Calculation Section**

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

<b>Compliance History</b>	57.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$712
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Notes: Enhancement for seven NOV's with same/similar violations, one NOV with dissimilar violations and one final enforcement action containing a denial of liability.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$133  
Approx. Cost of Compliance: \$125  
\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$1,962
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	6.8%	<b>Adjustment</b>	\$133
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided costs of compliance.

<b>Final Penalty Amount</b>	\$2,095
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$2,095
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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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.

<b>PAYABLE PENALTY</b>	\$2,095
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Screening Date 22-May-2012

Docket No. 2012-1188-PWS-E

PCW

Respondent Brush Country Development Corporation

Policy Revision 2 (September 2002)

Case ID No. 44313

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106103765

Media [Statute] Public Water Supply

Enf. Coordinator Katy Schumann

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	7	35%
	Other written NOVs	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) 57%

## &gt;&gt; Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance History Notes

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

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 57%

<b>Screening Date</b>	22-May-2012	<b>Docket No.</b>	2012-1188-PWS-E	<b>PCW</b>
<b>Respondent</b>	Brush Country Development Corporation			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	44313			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN106103765			
<b>Media [Statute]</b>	Public Water Supply			
<b>Enf. Coordinator</b>	Katy Schumann			

**Violation Number**

**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 April 2011 through August 2011.

**Base Penalty**

>> **Environmental, Property and Human Health Matrix**

<b>OR</b>	<b>Harm</b>			
	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="25%"/>
Potential	<input type="text" value="x"/>	<input type="text"/>		

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="0%"/>

**Matrix Notes** Failure to collect water samples for coliform analysis could result in the persons served by the Facility being exposed to undetected contaminants that would exceed levels protective of human health.

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

Five monthly events are recommended.

**Good Faith Efforts to Comply**

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

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

**Violation Subtotal**

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

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

## Economic Benefit Worksheet

**Respondent** Brush Country Development Corporation  
**Case ID No.** 44313  
**Reg. Ent. Reference No.** RN106103765  
**Media Violation No.** Public Water Supply  
 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-Apr-2011	31-Aug-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 to collect a total of five monthly routine water samples for coliform analysis (\$25 per sample), calculated for the months in which no samples were collected.

Approx. Cost of Compliance

\$125

**TOTAL**

\$133



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	7-May-2012	<b>Screening</b>	22-May-2012	<b>EPA Due</b>	30-Jun-2012
	<b>PCW</b>	19-Jun-2012				

**RESPONDENT/FACILITY INFORMATION**

<b>Respondent</b>	BRUSH COUNTRY DEVELOPMENT CORPORATION		
<b>Reg. Ent. Ref. No.</b>	RN106103765		
<b>Facility/Site Region</b>	16-Laredo	<b>Major/Minor Source</b>	Minor

**CASE INFORMATION**

<b>Enf./Case ID No.</b>	44313	<b>No. of Violations</b>	1
<b>Docket No.</b>	2012-1188-PWS-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Public Water Supply	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Katy Schumann
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000

**Penalty Calculation Section**

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$900
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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.

<b>Compliance History</b>	57.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$513
<b>Notes</b>	Enhancement for seven NOV with same/similar violations, one NOV with dissimilar violations and one final enforcement action containing a denial of liability.		
<b>Culpability</b>	No 0.0% Enhancement	<b>Subtotal 4</b>	\$0
<b>Notes</b>	The Respondent does not meet the culpability criteria.		
<b>Good Faith Effort to Comply Total Adjustments</b>		<b>Subtotal 5</b>	\$0
<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
Total EB Amounts	\$161	*Capped at the Total EB \$ Amount	
Approx. Cost of Compliance	\$150		
<b>SUM OF SUBTOTALS 1-7</b>		<b>Final Subtotal</b>	\$1,413

**OTHER FACTORS AS JUSTICE MAY REQUIRE**

Reduces or enhances the Final Subtotal by the indicated percentage.

	11.4%	<b>Adjustment</b>	\$161
<b>Notes</b>	Enhancement to capture the avoided costs of compliance.		
		<b>Final Penalty Amount</b>	\$1,574

**STATUTORY LIMIT ADJUSTMENT**

		<b>Final Assessed Penalty</b>	\$1,574
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**DEFERRAL**

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

	0.0%	Reduction	<b>Adjustment</b>	\$0
<b>Notes</b>	No deferral is recommended for Findings Orders.			

**PAYABLE PENALTY**

			\$1,574
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**Screening Date** 22-May-2012 **Docket No.** 2012-1188-PWS-E  
**Respondent** Brush Country Development Corporation  
**Case ID No.** 44313  
**Reg. Ent. Reference No.** RN106103765  
**Media [Statute]** Public Water Supply  
**Enf. Coordinator** Katy Schumann

PCW

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

### Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	7	35%
	Other written NOVs	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)** 57%

>> **Repeat Violator (Subtotal 3)**

N/A

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

N/A

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

**Compliance History Notes**

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

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 57%

>> **Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 57%

<b>Screening Date</b>	22-May-2012	<b>Docket No.</b>	2012-1188-PWS-E	<b>PCW</b>
<b>Respondent</b>	Brush Country Development Corporation		Policy Revision 3 (September 2011)	
<b>Case ID No.</b>	44313		PCW Revision August 3, 2011	
<b>Reg. Ent. Reference No.</b>	RN106103765			
<b>Media [Statute]</b>	Public Water Supply			
<b>Enf. Coordinator</b>	Katy Schumann			

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

>> **Environmental, Property and Human Health Matrix**

<b>OR</b>	<b>Harm</b>			<b>Percent</b> <input type="text" value="15.0%"/>	
	<b>Release</b>	Major	Moderate		Minor
	<b>Actual</b>	<input type="text"/>	<input type="text"/>		<input type="text"/>
	<b>Potential</b>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	<b>Percent</b> <input type="text" value="0.0%"/>
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**Matrix Notes**

**Adjustment**

**Violation Events**

**Number of Violation Events**  **Number of violation days**

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	(mark with x)

**Notes**

**Violation Subtotal**

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

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

## Economic Benefit Worksheet

**Respondent** Brush Country Development Corporation  
**Case ID No.** 44313  
**Reg. Ent. Reference No.** RN106103765  
**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]	\$150	1-Sep-2011	29-Feb-2012	1.41	\$11	\$150	\$161
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount to collect a total of six monthly routine water samples for coliform analysis (\$25 per sample), calculated for the months in which no samples were collected.

Approx. Cost of Compliance \$150

**TOTAL** \$161

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603825431 BRUSH COUNTRY DEVELOPMENT CORPORATION Classification: Rating:  
Regulated Entity: RN106103765 US BORDER PATROL STATION FREER Classification: Site Rating:  
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0660022

Location: 5087 TEXAS HIGHWAY 44, DUVAL COUNTY, TEXAS  
TCEQ Region: REGION 16 - LAREDO  
Date Compliance History Prepared: May 15, 2012

Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: May 15, 2007 to May 15, 2012

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

Name: Katy Schumann Phone: (512) 239-2602

## Site Compliance History Components

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**, who is the current owner/operator? N/A
4. If **YES**, 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
6. Rating Date: N/A Repeat Violator: 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: 11/18/2011**

**ADMINORDER 2011-0796-PWS-E**

Classification: Major

Citation: 30 TAC Chapter 290, SubChapter D 290.42(b)(1)

Description: Failure to provide disinfection facilities for microbiological control and distribution protection.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(3)

Description: Failure to provide an overflow on the Facility's ground storage tank that is designed in strict accordance with American Water Works Association standards.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.39(e)(1)

30 TAC Chapter 290, SubChapter D 290.39(e)(3)

30 TAC Chapter 290, SubChapter D 290.39(h)(1)

5A THSC Chapter 341, SubChapter A 341.035(c)

Description: Failed to submit engineering plans and specifications and receive written approval prior to beginning construction of a new public water supply system.

Classification: Moderate

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

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

- 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	04/19/2012	(1000857)	5	04/19/2012	(1001103)
2	04/19/2012	(1001089)	6	04/19/2012	(1001106)
3	04/19/2012	(1001093)	7	04/19/2012	(1001110)
4	04/19/2012	(1001097)	8	05/02/2012	(1001121)

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

**Date: 10/07/2011**

**(1000857)**

**CN603825431**

Self Report? NO

Classification: Moderate

Citation: 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 08/2011 - Failure to collect any routine monitoring sample(s).

**Date: 11/17/2011**

**(1001089)**

**CN603825431**

Self Report? NO

Classification: Moderate

Citation: 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 09/2011 - Failure to collect any routine monitoring sample(s).

**Date: 12/05/2011 (963322) CN603825431**  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(i)  
 Description: Failure to maintain records of chemical usage as required.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter D 290.42(j)  
 Description: Failure to use chemicals that conform to American National Standards Institute/National Sanitation Foundation (ANSI/NSF) Standard 60 for direct additives.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)  
 Description: Failure to maintain an up-to-date chemical and microbiological monitoring plan.  
 Self Report? NO Classification: Moderate  
 Citation: 30 TAC Chapter 290, SubChapter F 290.110(c)(4)(A)  
 Description: Failure to monitor the disinfectant residual in the distribution as required.

**Date: 02/29/2012 (1001097) CN603825431**  
 Self Report? NO Classification: Moderate  
 Citation: 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 sample(s).

**Date: 02/29/2012 (1001093) CN603825431**  
 Self Report? NO Classification: Moderate  
 Citation: 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 10/2011 - Failure to collect any routine monitoring sample(s).

**Date: 03/15/2012 (1001103) CN603825431**  
 Self Report? NO Classification: Moderate  
 Citation: 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 sample(s).

**Date: 03/27/2012 (1001106) CN603825431**  
 Self Report? NO Classification: Moderate  
 Citation: 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 01/2012 - Failure to collect any routine monitoring sample(s).

**Date: 04/10/2012 (1001110) CN603825431**  
 Self Report? NO Classification: Moderate  
 Citation: 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 02/2012 - Failure to collect any routine monitoring sample(s).

- 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  
BRUSH COUNTRY DEVELOPMENT  
CORPORATION;  
RN106103765**

§  
§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2012-1188-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 BRUSH COUNTRY DEVELOPMENT CORPORATION ("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 Kim Cox, 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 5087 Texas Highway 44 in Freer, Duval 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 April 16, 2012, TCEQ Central Office staff documented that Respondent:
  - a. Failed to collect routine distribution water samples for coliform analysis for the months of April 2011 through August 2011; and
  - b. Failed to collect routine distribution water samples for coliform analysis for the months of September 2011 through February 2012.
3. Respondent received notice of the violations on or about April 29, 2012.

4. The Executive Director recognizes that Respondent has demonstrated ten consecutive months of compliant sampling in accordance with 30 TEX. ADMIN. CODE § 290.109.

#### **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 for the months of April 2011 through August 2011, in violation of TEX. HEALTH & SAFETY CODE § 341.033(d) and 30 TEX. ADMIN. CODE § 290.109(c)(2)(A)(i).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to collect routine distribution water samples for coliform analysis for the months of September 2011 through February 2012, in violation of TEX. HEALTH & SAFETY CODE § 341.033(d) and 30 TEX. ADMIN. CODE § 290.109(c)(2)(A)(i).
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 three thousand six hundred sixty-nine dollars (\$3,669.00) 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. Respondent paid one hundred sixty-nine dollars (\$169.00) of the administrative penalty. The remaining amount of three thousand five hundred dollars (\$3,500.00) of the administrative penalty shall be payable in thirty-five (35) 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. 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: BRUSH COUNTRY DEVELOPMENT CORPORATION, Docket No. 2012-1188-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. All relief not expressly granted in this Agreed Order is denied.
3. The provisions of this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. This Agreed Order, issued by the Commission, shall not be admissible against 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.
6. 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.
7. 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.
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. 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.

BRUSH COUNTRY DEVELOPMENT CORPORATION  
Docket No. 2012-118E-PWS-E  
Page 4

**SIGNATURE PAGE**

**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director

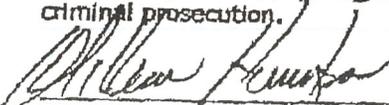
April 19, 2013  
Date

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 BRUSH COUNTRY DEVELOPMENT CORPORATION, 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 Agreed 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 - William Humiston, President  
BRUSH COUNTRY DEVELOPMENT CORPORATION

4/19/2013  
Date