

Executive Summary – Enforcement Matter – Case No. 46745
Larry E. Smith dba Lenny's BBQ and Little Treehouse Learning Center
RN106357403
Docket No. 2013-0825-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:

Yes

Location(s) Where Violation(s) Occurred:

Lenny's BBQ and Little Treehouse Early Learning Center, 1224 Talley Road, Bexar County

Type of Operation:

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: October 18, 2013

Comments Received: No

Penalty Information

Total Penalty Assessed: \$1,723

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$123

Total Due to General Revenue: \$1,600

Payment Plan: 16 payments of \$100 each

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - N/A

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: \$20

Applicable Penalty Policy: September 2011

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Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: March 13, 2012, February 28, 2013 and May 6, 2013

Date(s) of NOE(s): April 24, 2013 and May 29, 2013

Violation Information

1. Failed to submit plans and specifications to the Executive Director ("ED") for review and approval prior to the establishment of a new public water supply [30 TEX. ADMIN. CODE § 290.39(e)(1) and (h)(1) and TEX. HEALTH & SAFETY CODE § 341.035].
2. Failed to measure the free chlorine residual to a minimum accuracy of plus or minus 0.1 milligrams per liter using methods approved by the ED [30 TEX. ADMIN. CODE § 290.110(d)(1)].
3. Failed to ensure that wellheads and pump bases are sealed by a gasket or sealing compound and are properly vented to prevent the possibility of contaminating the well water [30 TEX. ADMIN. CODE § 290.41(c)(3)(K)].
4. Failed to provide a suitable sampling cock on the discharge pipe of each well pump prior to any treatment [30 TEX. ADMIN. CODE § 290.41(c)(3)(M)].
5. Failed to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code [30 TEX. ADMIN. CODE § 290.46(v)].
6. Failed to provide the results of annual sampling for nitrates and Disinfection Byproducts for the 2012 monitoring period [30 TEX. ADMIN. CODE §§ 290.106(e) and 290.113(e)].
7. Failed to provide the results of triennial sampling for metals, minerals, volatile organic chemical contaminants, and synthetic organic chemical contaminants to the ED for the January 1, 2010 through December 31, 2012 monitoring period [30 TEX. ADMIN. CODE §§ 290.106(e) and 290.107(e)].
8. Failed to collect raw groundwater source *Escherichia coli* samples from all active sources within 24 hours of being notified of a distribution total coliform-positive result and failed to provide notification of the failure to sample during the month of October 2012 [30 TEX. ADMIN. CODE §§ 290.109(c)(4)(B) and 290.122(c)(2)(A)].
9. Failed to submit a disinfectant level quarterly operating report ("DLQOR") to the ED each quarter by the tenth day of the month following the end of the quarter [30 TEX. ADMIN. CODE § 290.110(e)(4)(A) and (f)(3)].

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10. Failed to provide public notification regarding coliform monitoring violations [30 TEX. ADMIN. CODE § 290.122(c)(2)(A)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent has implemented the following corrective measures:

a. On March 21, 2013:

i. Submitted photographic documentation demonstrating that the wellhead had been adequately sealed and a well casing vent was installed;

ii. Submitted photographic documentation demonstrating that a sampling cock was installed on the well's discharge line; and

iii. Submitted photographic documentation demonstrating that the well pump electrical wiring was installed in conduit.

b. On April 4, 2013, obtained an approved test kit to measure the chlorine residual.

Technical Requirements:

The Order will require Respondent to:

a. Within 30 days:

i. Begin complying with applicable coliform monitoring requirements by collecting one raw groundwater source *Escherichia coli* sample from each groundwater source in use at the time the distribution coliform-positive sample was collected and providing water that meets the provisions regarding microbial contaminants. This provision will be satisfied upon six consecutive months of compliant monitoring and reporting;

ii. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to persons served by the Facility, including but not limited to submitting public notification regarding the routine coliform monitoring and raw groundwater source monitoring violations;

iii. Update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified DLQORs;

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iv. Ensure that all delinquent drinking water chemical analysis results are reported to the ED or demonstrate that a compliance schedule has been established; and
v. 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 ED within ten days of ED request or of their receipt by the Facility, whichever is later.

b. Within 45 days, submit written certification demonstrating compliance with Ordering Provisions a.ii. through a.v.

c. Within 90 days, begin submitting DLQORs to the ED each quarter by the tenth day of the month following the end of the quarter. This provision will be satisfied upon two consecutive quarters of compliant reporting.

d. Within 180 days, submit accurate, up-to-date, and detailed as-built plans, specifications, and engineering reports for review and approval. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning as-built plans within 15 days after the date of such requests, or by any other deadline specified in writing.

e. Within 195 days, submit written certification demonstrating compliance with Ordering Provisions a.i. and d.;

f. Within 270 days, obtain approval of the as-built plans and specifications; and

g. Within 285 days, submit written certification demonstrating compliance with Ordering Provisions c. and f.

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: Michaelle Garza, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4076; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456

TCEQ SEP Coordinator: N/A

Respondent: Larry E. Smith, Owner, Lenny's BBQ and Little Treehouse Early Learning Center, 1127 Mindie Lane, San Antonio, Texas 78253-5143

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Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	29-Apr-2013	Screening	30-Apr-2013	EPA Due	30-Jun-2013
	PCW	10-Jun-2013				

RESPONDENT/FACILITY INFORMATION

Respondent	Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center		
Reg. Ent. Ref. No.	RN106357403		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	46745	No. of Violations	5
Docket No.	2013-0825-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Michaelle Garza
		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 30-Apr-2013

Docket No. 2013-0825-PWS-E

PCW

Larry E. Smith dba Lenny's BBQ and Little

Respondent Treehouse Early Learning Center

Policy Revision 3 (September 2011)

Case ID No. 46745

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106357403

Media [Statute] Public Water Supply

Enf. Coordinator Michaelle Garza

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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 25%

>> **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 five NOVs with same/similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 25%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 25%

Screening Date 30-Apr-2013

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PCW

Respondent Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center

Policy Revision 3 (September 2011)
PCW Revision August 3, 2011

Case ID No. 46745
Reg. Ent. Reference No. RN106357403

Media [Statute] Public Water Supply

Enf. Coordinator Michaelle Garza

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.39(e)(1) and (h)(1) and Tex. Health & Safety Code § 341.035

Violation Description

Failed to submit plans and specifications to the Executive Director for review and approval prior to the establishment of a new public water supply. Specifically, the Respondent was operating businesses which meet the definition of a non-transient non-community public water supply without first obtaining approval.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor). All cells are empty.

Percent 0.0%

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor. Major cell contains 'x'.

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 1

61 Number of violation days

mark only one with an x

Table with frequency options: daily, weekly, monthly, quarterly, semiannual, annual, single event. 'single event' cell contains 'x'.

Violation Base Penalty \$50

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table with columns: Extraordinary, Ordinary, N/A. Rows: Before NOV, NOV to EDPRP/Settlement Offer. N/A row contains 'x' and '(mark with x)'.

Notes

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

Violation Subtotal \$50

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$233

Violation Final Penalty Total \$63

This violation Final Assessed Penalty (adjusted for limits) \$63

Economic Benefit Worksheet

Respondent Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center
Case ID No. 46745
Reg. Ent. Reference No. RN106357403
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)	\$1,500	10-Feb-2012	1-May-2014	2.22	\$11	\$222	\$233
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the estimated amount to obtain the services of a professional engineer to prepare and submit plans and specifications for the public water supply, calculated from the date of the investigation when the violation was first documented 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

\$1,500

TOTAL

\$233

Screening Date 30-Apr-2013

Docket No. 2013-0825-PWS-E

PCW

Respondent Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center

Policy Revision 3 (September 2011)

Case ID No. 46745

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106357403

Media [Statute] Public Water Supply

Enf. Coordinator Michaelle Garza

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 290.110(d)(1)

Violation Description

Failed to measure the free chlorine residual to a minimum accuracy of plus or minus 0.1 milligrams per liter ("mg/L") using methods approved by the Executive Director. Specifically, a orthotolidine test kit (pool test kit) was being used to monitor the free chlorine residual.

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 provide an approved testing method to monitor the effectiveness of the disinfection process could result in the non-detection of improperly treated water and potentially expose persons served by the Facility to contaminants which would exceed levels that are protective of human health.

Adjustment \$850

\$150

Violation Events

Number of Violation Events 2

35 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$300

Two monthly events are recommended, calculated from the date of the investigation, February 28, 2013, to the date of compliance, April 4, 2013.

Good Faith Efforts to Comply

25.0% Reduction

\$75

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

Notes The Respondent achieved compliance on April 4, 2013.

Violation Subtotal \$225

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$300

This violation Final Assessed Penalty (adjusted for limits) \$300

Economic Benefit Worksheet

Respondent Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center
Case ID No. 46745
Reg. Ent. Reference No. RN106357403
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	\$66	28-Feb-2013	4-Apr-2013	0.10	\$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

The delayed cost includes the amount to purchase an approved test kit for measuring the free chlorine residual, calculated from the date of the investigation to the 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

\$66

TOTAL

\$0

Screening Date 30-Apr-2013 Docket No. 2013-0825-PWS-E

PCW

Respondent Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center
Case ID No. 46745
Reg. Ent. Reference No. RN106357403
Media [Statute] Public Water Supply
Enf. Coordinator Michaëlle Garza

Policy Revision 3 (September 2011)
PCW Revision August 3, 2011

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 290.41(c)(3)(K)

Violation Description

Failed to ensure that wellheads and pump bases are sealed by a gasket or sealing compound and are properly vented to prevent the possibility of contaminating the well water. Specifically, it was documented that there was a gap where the wellhead rested on the well casing and there was no casing vent.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor). Row 1: Actual Major, Moderate, Minor. Row 2: Potential Major, Moderate (x), Minor.

Percent 5.0%

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor. Row 1: Falsification, Major, Moderate, Minor.

Percent 0.0%

Matrix Notes

Failure to seal the wellhead and provide a casing vent could expose persons served by the Facility to significant amounts of contaminants which would not exceed levels that are protective of human health.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 2

21 Number of violation days

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

Violation Base Penalty \$100

Two quarterly events are recommended (one for each deficiency), calculated from the date of the investigation, February 28, 2013, to the date of compliance, March 21, 2013.

Good Faith Efforts to Comply

25.0% Reduction

\$25

Table for Good Faith Efforts: Extraordinary, Ordinary (x), N/A (mark with x). Columns: Before NOV, NOV to EDPRP/Settlement Offer.

Notes The Respondent achieved compliance on March 21, 2013.

Violation Subtotal \$75

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$100

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

Economic Benefit Worksheet

Respondent Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center
Case ID No. 46745
Reg. Ent. Reference No. RN106357403
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	\$162	28-Feb-2013	21-Mar-2013	0.06	\$0	\$1	\$1
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the estimated amount to install a well casing vent and seal the wellhead, calculated from the date of the investigation to the 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

\$162

TOTAL

\$1

Screening Date 30-Apr-2013

Docket No. 2013-0825-PWS-E

PCW

Larry E. Smith dba Lenny's BBQ and Little Treehouse Early

Policy Revision 3 (September 2011)

Respondent Learning Center

PCW Revision August 3, 2011

Case ID No. 46745

Reg. Ent. Reference No. RN106357403

Media [Statute] Public Water Supply

Enf. Coordinator Michaelle Garza

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 290.41(c)(3)(M)

Violation Description

Failed to provide a suitable sampling cock on the discharge pipe of each well pump prior to any treatment. Specifically, the well's discharge line was lacking the required sampling cock which is needed for raw water sampling.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			X

Percent 3.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Failure to provide a suitable sampling cock could prevent the Facility from obtaining raw water samples prior to treatment and could expose persons served by the Facility to an insignificant amount of contaminants which would not exceed levels protective of human health.

Adjustment \$970

\$30

Violation Events

Number of Violation Events 1

21 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$30

One single event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$7

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

Notes The Respondent achieved compliance on March 21, 2013.

Violation Subtotal \$23

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$31

This violation Final Assessed Penalty (adjusted for limits) \$50

Economic Benefit Worksheet

Respondent Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center
Case ID No. 46745
Reg. Ent. Reference No. RN106357403
Media Public Water Supply
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$100	28-Feb-2013	21-Mar-2013	0.06	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the estimated amount to install a sampling cock prior to treatment, calculated from the date of the investigation to the 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

\$100

TOTAL

\$0

Screening Date 30-Apr-2013 Docket No. 2013-0825-PWS-E

PCW

Respondent Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center

Policy Revision 3 (September 2011)

Case ID No. 46745

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106357403

Media [Statute] Public Water Supply

Enf. Coordinator Michaelle Garza

Violation Number 5

Rule Cite(s) 30 Tex. Admin. Code § 290.46(v)

Violation Description Failed to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code. Specifically, the electrical wiring for the well pump was not installed inside a conduit.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				15.0%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

Matrix Notes

Failure to ensure all electrical wiring is installed in compliance with a local or national code could cause equipment malfunctions resulting in low pressure or outages which could expose persons served by the Facility to contaminants which would exceed levels protective of human health.

Adjustment \$850

\$150

Violation Events

Number of Violation Events 1 21 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$150

One monthly event is recommended, calculated from the date of the investigation, February 28, 2013, to the date of compliance, March 21, 2013.

Good Faith Efforts to Comply

25.0% Reduction

\$37

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

Notes The Respondent achieved compliance on March 21, 2013.

Violation Subtotal \$113

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$151

This violation Final Assessed Penalty (adjusted for limits) \$151

Economic Benefit Worksheet

Respondent Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center
Case ID No. 46745
Reg. Ent. Reference No. RN106357403
Media Public Water Supply
Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$200	28-Feb-2013	21-Mar-2013	0.06	\$0	\$1	\$1
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the estimated amount to install electrical wiring in compliance with a local or national code, calculated from the date of the investigation to the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$200

TOTAL

\$1



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	3-Jun-2013	Screening	5-Jun-2013	EPA Due	30-Jun-2013
	PCW	10-Jun-2013				

RESPONDENT/FACILITY INFORMATION	
Respondent	Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center
Reg. Ent. Ref. No.	RN106357403
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	46745	No. of Violations	5
Docket No.	2013-0825-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Michaelle Garza
		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	\$750
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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	25.0% Enhancement	Subtotals 2, 3, & 7
		\$187

Notes: Enhancement for five NOVs with same/similar violations.

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: \$278
 Approx. Cost of Compliance: \$2,178
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$937
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OTHER FACTORS AS JUSTICE MAY REQUIRE	13.1%	Adjustment	\$123
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Enhancement to capture the avoided costs of compliance associated with Violation Nos. 3, 4, and 5.

Final Penalty Amount **\$1,060**

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,060
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DEFERRAL	0.0% Reduction	Adjustment	\$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.

PAYABLE PENALTY	\$1,060
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Screening Date 5-Jun-2013

Docket No. 2013-0825-PWS-E

PCW

Larry E. Smith dba Lenny's BBQ and Little

Respondent Treehouse Early Learning Center

Policy Revision 3 (September 2011)

Case ID No. 46745

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106357403

Media [Statute] Public Water Supply

Enf. Coordinator Michaelle Garza

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	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 25%

>> **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 five NOVs with same/similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 25%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 25%

Screening Date 5-Jun-2013

Docket No. 2013-0825-PWS-E

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Larry E. Smith dba Lenny's BBQ and Little Treehouse Early

Respondent Learning Center

Policy Revision 3 (September 2011)

Case ID No. 46745

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106357403

Media [Statute] Public Water Supply

Enf. Coordinator Michaelle Garza

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.106(e) and 290.113(e)

Violation Description Failed to provide the results of annual sampling for nitrates and Stage I Disinfection Byproducts ("DBPs") for the 2012 monitoring period.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0.0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			5.0%

Matrix Notes 100% of the rule requirements were not met.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 2 Number of violation days 365

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	
	semiannual	
	annual	x
single event		

Violation Base Penalty \$100

Two annual events are recommended (one for each report).

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 \$100

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$32

Violation Final Penalty Total \$141

This violation Final Assessed Penalty (adjusted for limits) \$141

Economic Benefit Worksheet

Respondent Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center
Case ID No. 46745
Reg. Ent. Reference No. RN106357403
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)	\$339	31-Dec-2012	1-Mar-2014	1.16	\$1	\$26	\$28
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	\$100	6-May-2013	1-Mar-2014	0.82	\$4	n/a	\$4
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the estimated amount to pay any outstanding lab fees so that the lab will release the nitrate (\$25) and DPB (\$314) results, calculated from the last date of the monitoring period for which results were not provided to the estimated date of compliance. The training 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

	\$439
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TOTAL

	\$32
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Screening Date 5-Jun-2013

Docket No. 2013-0825-PWS-E

PCW

Larry E. Smith dba Lenny's BBQ and Little Treehouse Early

Respondent Learning Center

Policy Revision 3 (September 2011)

Case ID No. 46745

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106357403

Media [Statute] Public Water Supply

Enf. Coordinator Michaelle Garza

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 290.106(e) and 290.107(e)

Violation Description

Failed to provide the results of triennial sampling for metals, minerals, volatile organic chemical ("VOC") contaminants, and synthetic organic chemical ("SOC") contaminants to the Executive Director for the January 1, 2010 through December 31, 2012 monitoring period.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirements were not met.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 4

1095 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$200

Four single events are recommended (one for each report).

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 \$200

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$112

Violation Final Penalty Total \$283

This violation Final Assessed Penalty (adjusted for limits) \$283

Economic Benefit Worksheet

Respondent Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center

Case ID No. 46745

Reg. Ent. Reference No. RN106357403

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)	\$1,377	31-Dec-2012	1-Mar-2014	1.16	\$5	\$107	\$112
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed cost includes the estimated amount to pay any outstanding lab fees so that the lab will release the results of monitoring for metals (\$264), minerals (\$155), VOC contaminants (\$183), and SOC contaminants (\$775), calculated from the last date of the monitoring period for which results were not provided to the estimated date of compliance. The other delayed costs are included in the economic benefit for Violation No. 1.

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

\$1,377

TOTAL

\$112

Screening Date 5-Jun-2013

Docket No. 2013-0825-PWS-E

PCW

Larry E. Smith dba Lenny's BBQ and Little Treehouse Early

Policy Revision 3 (September 2011)

Respondent Learning Center

PCW Revision August 3, 2011

Case ID No. 46745

Reg. Ent. Reference No. RN106357403

Media [Statute] Public Water Supply

Enf. Coordinator Michaelle Garza

Violation Number 3

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

Violation Description Failed to collect raw groundwater source Escherichia coli samples from all active sources within 24 hours of being notified of a distribution total coliform-positive result and failed to provide notification of the failure to sample during the month of October 2012.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (15.0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0.0%).

Matrix Notes Failure to perform raw groundwater source monitoring could result in persons served by the Facility being exposed to undetected contaminants, which would exceed levels protective of human health.

Adjustment \$850

\$150

Violation Events

Number of Violation Events 1 Number of violation days 31

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

Violation Base Penalty \$150

One monthly event is recommended.

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 \$150

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$40

Violation Final Penalty Total \$212

This violation Final Assessed Penalty (adjusted for limits) \$212

Economic Benefit Worksheet

Respondent Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center

Case ID No. 46745

Reg. Ent. Reference No. RN106357403

Media Public Water Supply

Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount

Item Description No commas or \$

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$100	6-May-2013	1-May-2014	0.99	\$5	n/a	\$5
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs include the estimated amount to update the Facility's operational guidance and conduct employee training to ensure that 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)

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	26-Oct-2012	27-Oct-2012	0.00	\$0	\$25	\$25
Other (as needed)	\$10	27-Oct-2012	28-Oct-2012	0.00	\$0	\$10	\$10

Notes for AVOIDED costs

The avoided costs include the estimated amount to collect one raw groundwater source sample (\$25), calculated for the 24-hour period following the coliform-positive result. The other avoided cost includes estimated amount to provide public notification of the raw groundwater source monitoring violation, calculated for the period when public notification should have been provided.

Approx. Cost of Compliance

\$135

TOTAL

\$40

Screening Date 5-Jun-2013

Docket No. 2013-0825-PWS-E

PCW

Larry E. Smith dba Lenny's BBQ and Little Treehouse Early

Respondent Learning Center

Policy Revision 3 (September 2011)

Case ID No. 46745

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106357403

Media [Statute] Public Water Supply

Enf. Coordinator Michaelle Garza

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 290.110(e)(4)(A) and (f)(3)

Violation Description

Failed to submit a disinfectant level quarterly operating report ("DLQOR") to the Executive Director each quarter by the tenth day of the month following the end of the quarter. Specifically, the Respondent failed to submit DLQORs for the second through fourth quarters of 2012.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 3

275 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$150

Three quarterly 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 \$150

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$78

Violation Final Penalty Total \$212

This violation Final Assessed Penalty (adjusted for limits) \$212

Economic Benefit Worksheet

Respondent Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center

Case ID No. 46745

Reg. Ent. Reference No. RN106357403

Media Public Water Supply

Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$45	6-May-2013	1-Mar-2014	0.82	\$2	n/a	\$2
Training/Sampling	\$100	6-May-2013	1-Mar-2014	0.82	\$4	n/a	\$4
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The delayed costs include the estimated amounts to update the Facility's operational guidance and conduct employee training to ensure that all DLQORs are submitted to the TCEQ 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]	\$67	10-Jul-2012	10-Jan-2013	1.42	\$5	\$67	\$72
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount to timely prepare and submit DLQORs (\$22.50 per DLQOR, rounded down), calculated from the due date of the first DLQOR to the due date of the last DLQOR.

Approx. Cost of Compliance

\$212

TOTAL

\$78

Screening Date 5-Jun-2013

Docket No. 2013-0825-PWS-E

PCW

Larry E. Smith dba Lenny's BBQ and Little Treehouse Early

Policy Revision 3 (September 2011)

Respondent Learning Center

PCW Revision August 3, 2011

Case ID No. 46745

Reg. Ent. Reference No. RN106357403

Media [Statute] Public Water Supply

Enf. Coordinator Michaelle Garza

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code § 290.122(c)(2)(A)

Violation Description

Failed to provide public notification regarding coliform monitoring violations. Specifically, the Respondent did not provide public notification of the failure to conduct routine coliform monitoring during the months of March and September 2012, and increased coliform monitoring during the month of November 2012.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 3

91 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$150

Three single events are recommended (one for each notification).

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 \$150

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$16

Violation Final Penalty Total \$212

This violation Final Assessed Penalty (adjusted for limits) \$212

Economic Benefit Worksheet

Respondent Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center

Case ID No. 46745

Reg. Ent. Reference No. RN106357403

Media Public Water Supply

Violation No. 5

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

The delayed cost is captured in the economic benefit for Violation No. 3.

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]	\$15	1-Apr-2012	28-Feb-2013	1.83	\$1	\$15	\$16
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount to provide public notification (\$5 per notice x 3 notices) of the coliform monitoring violations, calculated for the period when public notification should have been provided.

Approx. Cost of Compliance

\$15

TOTAL

\$16



TCEQ Compliance History Report

PUBLISHED Compliance History Report for CN604050062, RN106357403, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN604050062, Larry E. Smith **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN106357403, Lenny's BBQ and Little Treehouse Early Learning Center **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: 1224 TALLEY ROAD, BEXAR COUNTY, TEXAS

TCEQ Region: REGION 13 - SAN ANTONIO

ID Number(s):
PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0150560

Compliance History Period: September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

Date Compliance History Report Prepared: June 05, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: June 05, 2008 to June 05, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Michaelle Garza

Phone: (210) 403-4076

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:	07/24/2012 (1089125)	CN604050062
	Self Report?	NO	Classification: Moderate
	Citation:	30 TAC Chapter 290, SubChapter F 290.122(c)(2)(A) 30 TAC Chapter 290, SubChapter F 290.122(f)	
	Description:	MAR/2012 TCR Routine MR PN Posting and Reporting Violation - Failure to submit	

* NOVs applicable for the Compliance History rating period 9/1/2007 to 8/31/2012

Appendix B

All Investigations Conducted During Component Period June 05, 2008 and June 05, 2013

Item 1	April 23, 2013	(1078656) For Informational Purposes Only
Item 2	May 15, 2013	(1089125) For Informational Purposes Only
Item 3	May 31, 2013	(1092594) For Informational Purposes Only

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2007 and 08/31/2012.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	
LARRY E. SMITH DBA LENNY'S BBQ	§	TEXAS COMMISSION ON
AND LITTLE TREEHOUSE EARLY	§	
LEARNING CENTER	§	
RN106357403	§	ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2013-0825-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 Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. 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 public water supply at 1224 Talley Road in Bexar County, Texas (the "Facility") that has approximately three service connections and serves at least 25 people per day for at least 60 days per year.
2. During investigations conducted on March 13, 2012 and February 28, 2013, TCEQ staff documented that the Respondent was operating businesses which meet the definition of a non-transient non-community public water supply without first obtaining approval.
3. During investigations conducted on March 13, 2012 and February 28, 2013, TCEQ staff documented that a orthotolidine test kit (pool test kit) was being used to monitor the free chlorine residual.
4. During investigations conducted on March 13, 2012 and February 28, 2013, TCEQ staff documented that there was a gap where the wellhead rested on the well casing and there was no casing vent.
5. During investigations conducted on March 13, 2012 and February 28, 2013, TCEQ staff documented that the well's discharge line was lacking the required sampling cock which is needed for raw water sampling.
6. During investigations conducted on March 13, 2012 and February 28, 2013, TCEQ staff documented that the electrical wiring for the well pump was not installed inside a conduit.
7. During a record review conducted on May 6, 2013, TCEQ staff documented that the Respondent did not provide the results of annual sampling for nitrates and Stage I Disinfection Byproducts ("DBPs") for the 2012 monitoring period.
8. During a record review conducted on May 6, 2013, TCEQ staff documented that the Respondent did not provide the results of triennial sampling for metals, minerals, volatile organic chemical ("VOC") contaminants, and synthetic organic chemical ("SOC") contaminants to the Executive Director for the January 1, 2010 through December 31, 2012 monitoring period.
9. During a record review conducted on May 6, 2013, TCEQ staff documented that the Respondent did not collect raw groundwater source *Escherichia coli* samples from all active sources within 24 hours of being notified of a distribution total coliform-positive result and did not provide notification of the failure to sample during the month of October 2012.
10. During a record review conducted on May 6, 2013, TCEQ staff documented that the Respondent did not submit disinfectant level quarterly operating reports ("DLQORs") for the second through fourth quarters of 2012.
11. During a record review conducted on May 6, 2013, TCEQ staff documented that the Respondent did not provide public notification of the failure to conduct routine coliform

- monitoring during the months of March and September 2012, and increased coliform monitoring during the month of November 2012.
12. The Respondent received notice of the violations on June 5 and June 6, 2013.
 13. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. On March 21, 2013:
 - i. Submitted photographic documentation demonstrating that the wellhead had been adequately sealed and a well casing vent was installed;
 - ii. Submitted photographic documentation demonstrating that a sampling cock was installed on the well's discharge line; and
 - iii. Submitted photographic documentation demonstrating that the well pump electrical wiring was installed in conduit.
 - b. On April 4, 2013, obtained an approved test kit to measure the chlorine residual.

II. CONCLUSIONS OF LAW

1. The 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 Findings of Fact No. 2, the Respondent failed to submit plans and specifications to the Executive Director for review and approval prior to the establishment of a new public water supply, in violation of 30 TEX. ADMIN. CODE § 290.39(e)(1) and (h)(1) and TEX. HEALTH & SAFETY CODE § 341.035.
3. As evidenced by Findings of Fact No. 3, the Respondent failed to measure the free chlorine residual to a minimum accuracy of plus or minus 0.1 milligrams per liter ("mg/L") using methods approved by the Executive Director, in violation of 30 TEX. ADMIN. CODE § 290.110(d)(1).
4. As evidenced by Findings of Fact No. 4, the Respondent failed to ensure that wellheads and pump bases are sealed by a gasket or sealing compound and are properly vented to prevent the possibility of contaminating the well water, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(K).
5. As evidenced by Findings of Fact No. 5, the Respondent failed to provide a suitable sampling cock on the discharge pipe of each well pump prior to any treatment, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(M).
6. As evidenced by Findings of Fact No. 6, the Respondent failed to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code, in violation of 30 TEX. ADMIN. CODE § 290.46(v).

7. As evidenced by Findings of Fact No. 7, the Respondent failed to provide the results of annual sampling for nitrates and DBPs for the 2012 monitoring period, in violation of 30 TEX. ADMIN. CODE §§ 290.106(e) and 290.113(e).
8. As evidenced by Findings of Fact No. 8, the Respondent failed to provide the results of triennial sampling for metals, minerals, VOC contaminants, and SOC contaminants to the Executive Director for the January 1, 2010 through December 31, 2012 monitoring period, in violation of 30 TEX. ADMIN. CODE §§ 290.106(e) and 290.107(e).
9. As evidenced by Findings of Fact No. 9, the Respondent failed to collect raw groundwater source *Escherichia coli* samples from all active sources within 24 hours of being notified of a distribution total coliform-positive result and failed to provide notification of the failure to sample during the month of October 2012, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(4)(B) and 290.122(c)(2)(A).
10. As evidenced by Findings of Fact No. 10, the Respondent failed to submit a DLQOR to the Executive Director each quarter by the tenth day of the month following the end of the quarter, in violation of 30 TEX. ADMIN. CODE § 290.110(e)(4)(A) and (f)(3).
11. As evidenced by Findings of Fact No. 11, the Respondent failed to provide public notification regarding coliform monitoring violations, in violation of 30 TEX. ADMIN. CODE § 290.122(c)(2)(A).
12. 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.
13. An administrative penalty in the amount of One Thousand Seven Hundred Twenty-Three Dollars (\$1,723) 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 One Hundred Twenty-Three Dollars (\$123) of the administrative penalty. The remaining amount of One Thousand Six Hundred Dollars (\$1,600) of the administrative penalty shall be payable in 16 monthly payments of One Hundred Dollars (\$100) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

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 One Thousand Seven Hundred Twenty-Three Dollars (\$1,723) as set forth in Section II, Paragraph 13 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: Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center, Docket No. 2013-0825-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 30 days after the effective date of this Agreed Order:
 - i. Begin complying with applicable coliform monitoring requirements by collecting one raw groundwater source *Escherichia coli* sample from each groundwater source in use at the time the distribution coliform-positive sample was collected 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;
 - ii. Implement procedures to ensure that all necessary public notifications are provided in a timely manner to persons served by the Facility, including but not limited to submitting public notification regarding the routine coliform monitoring and raw groundwater source monitoring violations, in accordance with 30 TEX. ADMIN. CODE § 290.122;
 - iii. Update the Facility's operational guidance and conduct employee training to ensure that self-reporting requirements are properly accomplished, including the timely submittal of signed and certified DLQORs, in accordance with 30 TEX. ADMIN. CODE § 290.110;
 - iv. Ensure that all delinquent drinking water chemical analysis results are reported to the Executive Director or demonstrate that a compliance schedule has been established, in accordance with 30 TEX. ADMIN. CODE

§§ 290.106 (Inorganic Contaminants), 290.107 (Organic Contaminants), and 290.113 (Stage 1 Disinfection Byproducts); and

- v. 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 ten 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), 290.107 (Organic Contaminants), and 290.113 (Stage 1 Disinfection Byproducts).
- b. Within 45 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.g. and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.ii. through 2.a.v.
- c. Within 90 days after the effective date of this Agreed Order, begin submitting DLQORs to the Executive Director each quarter by the tenth day of the month following the end of the quarter, in accordance with 30 TEX. ADMIN. CODE § 290.110. This provision will be satisfied upon two consecutive quarters of compliant reporting. DLQORs shall be submitted to:

DLQOR Coordinator
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- d. Within 180 days after the effective date of this Agreed Order, submit accurate, up-to-date, and detailed as-built plans, specifications, and engineering reports for review and approval, in accordance with 30 TEX. ADMIN. CODE § 290.39. The plans, specifications, and reports shall be submitted to:

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

Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning as-built plans within 15 days after the date of such requests, or by any other deadline specified in writing.

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

- f. Within 270 days after the effective date of this Agreed Order, obtain approval of the as-built plans and specifications, in accordance with 30 TEX. ADMIN. CODE § 290.39; and
- g. Within 285 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 Nos. 2.c. and 2.f. 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:

Water Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

and 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


For the Executive Director

11/18/13
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center. I am authorized to agree to the attached Agreed Order on behalf of Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center, 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, Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center 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.


Signature

9/1/13
Date

LARRY E SMITH
Name (Printed or typed)

OWNER
Title

Authorized Representative of
Larry E. Smith dba Lenny's BBQ and Little Treehouse Early Learning Center

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.