

**Executive Summary – Enforcement Matter – Case No. 47036**  
**73 LAND CORP., INC. dba Nutty Jerrys**  
**RN106239916**  
**Docket No. 2013-1127-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:**

Nutty Jerrys, 18291 Elgin Road, Jefferson 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:** March 21, 2014

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$2,877

**Amount Deferred for Expedited Settlement:** \$0

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$2,877

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**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:** N/A

**Applicable Penalty Policy:** September 2011

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** October 1, 2012 and April 22, 2013

**Date(s) of NOE(s):** October 17, 2012 and May 22, 2013

**Executive Summary – Enforcement Matter – Case No. 47036**  
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**RN106239916**  
**Docket No. 2013-1127-PWS-E**

***Violation Information***

1. Failed to collect routine distribution water samples for coliform analysis and failed to provide public notice of the failure to sample [30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B), and TEX. HEALTH & SAFETY CODE § 341.033(d)].
2. Failed to collect at least five routine distribution coliform samples the month following a coliform-positive sample result for the month of July 2012 [30 TEX. ADMIN. CODE § 290.109(c)(2)(F)].
3. Failed to submit a Disinfectant Level Quarterly Operating Report to the Executive Director ("ED") each quarter by the tenth day of the month following the end of each quarter [30 TEX. ADMIN. CODE § 290.110(e)(4)(A) and (f)(3)].
4. Failed to provide the results of semiannual lead and copper sampling to the ED [30 TEX. ADMIN. CODE § 290.117(i)(1)].
5. Failed to collect raw groundwater source *Escherichia coli* samples from all active sources within 24 hours of notification of a distribution total coliform-positive sample and failed to provide public notification regarding the failure to conduct triggered source monitoring [30 TEX. ADMIN. CODE §§ 290.109(c)(4)(B) and 290.122(c)(2)(A)].
6. Failed to comply with maximum contaminant level for total coliform and failed to provide public notification regarding the exceedance of the maximum contaminant level for total coliform [30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.031(a)].
7. Failed to provide public notification regarding the failure to collect at least five routine distribution coliform samples the month following a total coliform-positive sample [30 TEX. ADMIN. CODE § 290.122(c)(2)(A)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

On June 19, 2013, the Facility consolidated water service by interconnecting to a consenting utility service provider that took sanitary control of the Facility's existing service connections, and the Facility was then inactivated as a public water supply.

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**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 30 days, ensure that all delinquent drinking water chemical analysis results are reported to the ED or demonstrate that a compliance schedule has been established; and
- b. Within 45 days, submit written certification to demonstrate compliance with Ordering Provision a.

***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:** Lisa Westbrook, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-1160; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456  
**TCEQ SEP Coordinator:** N/A  
**Respondent:** Jerry Nelson, President, 73 LAND CORP., INC., P.O. Box 1940, Winnie, Texas 77665  
**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

<b>DATES</b>	<b>Assigned</b>	28-May-2013	<b>Screening</b>	10-Jun-2013	<b>EPA Due</b>	30-Jun-2012
	<b>PCW</b>	11-Sep-2013				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	73 LAND CORP., INC. dba Nutty Jerrys
<b>Reg. Ent. Ref. No.</b>	RN106239916
<b>Facility/Site Region</b>	10-Beaumont
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	47036	<b>No. of Violations</b>	7
<b>Docket No.</b>	2013-1127-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>	Lisa Arneson
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$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	\$1,222
Approx. Cost of Compliance	\$11,260

\*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 10-Jun-2013

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PCW

Respondent 73 LAND CORP., INC. dba Nutty Jerrys

Policy Revision 3 (September 2011)

Case ID No. 47036

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106239916

Media [Statute] Public Water Supply

Enf. Coordinator Lisa Arneson

### 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> )	9	45%
	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)** 45%

>> 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 nine NOVs with the same/similar violations.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 45%

>> Final Compliance History Adjustment

**Final Adjustment Percentage \*capped at 100%** 45%

Screening Date 10-Jun-2013

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Respondent 73 LAND CORP., INC. dba Nutty Jerrys

Policy Revision 3 (September 2011)

Case ID No. 47036

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106239916

Media [Statute] Public Water Supply

Enf. Coordinator Lisa Arneson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B), and Tex. Health & Safety Code § 341.033(d)

Violation Description Failed to collect routine distribution water samples for coliform analysis and failed to provide public notice of the failure to sample for the months of November 2011 through February 2012.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes Failure to perform routine coliform monitoring could result in persons served by the Facility being exposed to contaminants which would exceed levels protective of human health.

Adjustment \$850

\$150

Violation Events

Number of Violation Events 4

119 Number of violation days

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

Violation Base Penalty \$600

Four monthly events are recommended, based on one event for each month the required samples were not collected.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Reduction	
	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 \$600

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$825

Violation Final Penalty Total \$1,151

This violation Final Assessed Penalty (adjusted for limits) \$1,151

## Economic Benefit Worksheet

**Respondent** 73 LAND CORP., INC. dba Nutty Jerrys  
**Case ID No.** 47036  
**Reg. Ent. Reference No.** RN106239916  
**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
<small>No commas or \$</small>							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$10,000	1-Oct-2012	19-Jun-2013	0.72	\$24	\$477	\$501
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 cost to connect to a consenting utility service provider that will take control of the Facility's existing service connections and to inactivate the Facility, calculated from the date of record review to the date of inactivation.

### 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]	\$300	1-Nov-2011	29-Feb-2012	1.25	\$19	\$300	\$319
Other (as needed)	\$5	1-Dec-2011	31-May-2012	1.42	\$0	\$5	\$5

Notes for AVOIDED costs

The avoided cost includes the estimated amount (\$25 x 12 samples) to conduct routine coliform sampling, calculated for the months sampling was not conducted. The other avoided cost includes the estimated amount to provide public notice to the persons served by the Facility of the failure to conduct routine coliform monitoring, calculated for the period during which the notice was due.

Approx. Cost of Compliance

\$10,305

**TOTAL**

\$825

Screening Date 10-Jun-2013

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PCW

Respondent 73 LAND CORP., INC. dba Nutty Jerrys

Policy Revision 3 (September 2011)

Case ID No. 47036

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106239916

Media [Statute] Public Water Supply

Enf. Coordinator Lisa Arneson

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 290.109(c)(2)(F)

Violation Description Failed to collect all routine distribution coliform samples the month following a coliform-positive sample result for the month of July 2012. Specifically, the Respondent collected only three of the required five samples.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				15.0%
Potential	x			

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

Matrix Notes Failure to perform increased routine coliform monitoring could result in persons served by the Facility being exposed to contaminants which would exceed levels protective of human health.

Adjustment \$850

\$150

Violation Events

Number of Violation Events 1 Number of violation days 31

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

Violation Base Penalty \$150

One monthly event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$150

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$53

Violation Final Penalty Total \$288

This violation Final Assessed Penalty (adjusted for limits) \$288

## Economic Benefit Worksheet

**Respondent** 73 LAND CORP., INC. dba Nutty Jerrys  
**Case ID No.** 47036  
**Reg. Ent. Reference No.** RN106239916  
**Media** Public Water Supply  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

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

Notes for DELAYED costs

The delayed costs of compliance are captured in the Economic Benefit worksheet 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]	\$50	1-Jul-2012	31-Jul-2012	1.00	\$3	\$50	\$53
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount necessary (\$25 per sample x 2 missed samples) to conduct increased coliform sampling, calculated for the month the increased monitoring was required.

Approx. Cost of Compliance

\$50

**TOTAL**

\$53

Screening Date 10-Jun-2013

Docket No. 2013-1127-PWS-E

PCW

Respondent 73 LAND CORP., INC. dba Nutty Jerrys

Policy Revision 3 (September 2011)

Case ID No. 47036

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106239916

Media [Statute] Public Water Supply

Enf. Coordinator Lisa Arneson

Violation Number 3

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 each quarter. Specifically, at the time of the record review, it was documented that the Respondent did not submit DLQORs for the first quarter through the fourth quarter 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	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 4

365 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$200

Four single 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 \$200

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$98

Violation Final Penalty Total \$384

This violation Final Assessed Penalty (adjusted for limits) \$384

## Economic Benefit Worksheet

**Respondent** 73 LAND CORP., INC. dba Nutty Jerrys  
**Case ID No.** 47036  
**Reg. Ent. Reference No.** RN106239916  
**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
<small>No commas or \$</small>							

### 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 costs of compliance are captured in the Economic Benefit worksheet 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]	\$90	10-Apr-2012	10-Jan-2013	1.67	\$8	\$90	\$98
Other (as needed)				0.00	\$0	\$0	\$0

#### Notes for AVOIDED costs

The avoided cost includes the estimated amount to prepare and submit the missing DLQORs (\$22.50 X 4 reports), calculated from the date the first report was due to the date the last report was due.

Approx. Cost of Compliance

\$90

**TOTAL**

\$98

Screening Date 10-Jun-2013

Docket No. 2013-1127-PWS-E

PCW

Respondent 73 LAND CORP., INC. dba Nutty Jerrys

Policy Revision 3 (September 2011)

Case ID No. 47036

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106239916

Media [Statute] Public Water Supply

Enf. Coordinator Lisa Arneson

Violation Number 4

Rule Cite(s) 30 Tex. Admin. Code § 290.117(i)(1)

Violation Description Failed to provide the results of semiannual lead and copper sampling to the Executive Director for the July 1, 2012 through December 31, 2012 monitoring period.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (5.0%).

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$950

\$50

Violation Events

Number of Violation Events 1 Number of violation days 183

Table for marking violation frequency: daily, weekly, monthly, quarterly, semiannual, annual, Single event (marked with x).

Violation Base Penalty \$50

One single 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 \$50

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$20 Violation Final Penalty Total \$96

This violation Final Assessed Penalty (adjusted for limits) \$96

## Economic Benefit Worksheet

**Respondent** 73 LAND CORP., INC. dba Nutty Jerrys  
**Case ID No.** 47036  
**Reg. Ent. Reference No.** RN106239916  
**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)	\$600	31-Dec-2012	19-Jun-2013	0.47	\$1	\$19	\$20
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 (\$30 per sample x 20 samples for one 6-month period) so that the lab will release all drinking water chemical analysis results. The date required is the last date of the monitoring period for which results were not provided, and the final date is the date of inactivation for the Facility as a public water supply. Additional delayed costs of compliance are captured in the Economic Benefit worksheet 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

\$600

**TOTAL**

\$20

Screening Date 10-Jun-2013

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Respondent 73 LAND CORP., INC. dba Nutty Jerrys

Policy Revision 3 (September 2011)

Case ID No. 47036

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106239916

Media [Statute] Public Water Supply

Enf. Coordinator Lisa Arneson

Violation Number 5

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 notification of a distribution total coliform-positive sample for the months of June 2012 and December 2012, and failed to provide public notification regarding the failure to conduct triggered source monitoring for June 2012. Specifically, one raw groundwater source sample was required for June 2012 and three raw groundwater source samples were required for December 2012 and none were collected.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Failure to collect triggered source coliform samples and provide public notification 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 2

61 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.

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 \$300

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$113

Violation Final Penalty Total \$575

This violation Final Assessed Penalty (adjusted for limits) \$575

## Economic Benefit Worksheet

**Respondent** 73 LAND CORP., INC. dba Nutty Jerrys  
**Case ID No.** 47036  
**Reg. Ent. Reference No.** RN106239916  
**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
<small>No commas or \$</small>							

### 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 costs of compliance are captured in the Economic Benefit worksheet 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]	\$100	8-Jun-2012	20-Dec-2012	1.45	\$7	\$100	\$107
Other (as needed)	\$5	9-Jun-2012	8-Sep-2012	1.17	\$0	\$5	\$5

Notes for AVOIDED costs

The avoided cost includes the estimated amount to conduct triggered source coliform sampling (\$25 x 4 samples), calculated for the days when sampling was not conducted. The other avoided cost includes the estimated amount to provide public notification (\$5 x 1 notification), calculated for the period in which public notification was not provided.

Approx. Cost of Compliance

\$105

**TOTAL**

\$113

Screening Date 10-Jun-2013

Docket No. 2013-1127-PWS-E

PCW

Respondent 73 LAND CORP., INC. dba Nutty Jerrys

Policy Revision 3 (September 2011)

Case ID No. 47036

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106239916

Media [Statute] Public Water Supply

Enf. Coordinator Lisa Arneson

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code §§ 290.109(f)(3) and 290.122(b)(2)(B) and Tex. Health & Safety Code § 341.031(a)

Violation Description Failed to comply with the maximum contaminant level for total coliform for the month of December 2012 and failed to provide public notification regarding the exceedance of the maximum contaminant level for total coliform.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual		x		15.0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0.0%

Matrix Notes As a result of the exceedance and failure to provide public notification, persons served by the Facility have been exposed to significant amounts of contaminants which do not exceed levels protective of human health.

Adjustment \$850

\$150

Violation Events

Number of Violation Events 1 Number of violation days 31

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

Violation Base Penalty \$150

One monthly event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$150

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$110

Violation Final Penalty Total \$288

This violation Final Assessed Penalty (adjusted for limits) \$288

## Economic Benefit Worksheet

**Respondent** 73 LAND CORP., INC. dba Nutty Jerrys  
**Case ID No.** 47036  
**Reg. Ent. Reference No.** RN106239916  
**Media** Public Water Supply  
**Violation No.** 6

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

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

#### Notes for DELAYED costs

The delayed costs of compliance are captured in the Economic Benefit worksheet 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]	\$100	1-Dec-2012	31-Dec-2012	1.00	\$5	\$100	\$105
Other (as needed)	\$5	1-Jan-2013	31-Jan-2013	1.00	\$0	\$5	\$5

#### Notes for AVOIDED costs

The avoided cost includes the estimated amount necessary for additional sampling and oversight that could have prevented the exceedance, calculated for the month in which the exceedance occurred. The other avoided cost includes the estimated amount to provide public notification (\$5 x 1 notification), calculated for the period in which public notification was not provided.

Approx. Cost of Compliance

\$105

**TOTAL**

\$110

Screening Date 10-Jun-2013

Docket No. 2013-1127-PWS-E

PCW

Respondent 73 LAND CORP., INC. dba Nutty Jerrys

Policy Revision 3 (September 2011)

Case ID No. 47036

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106239916

Media [Statute] Public Water Supply

Enf. Coordinator Lisa Arneson

Violation Number 7

Rule Cite(s)

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

Violation Description

Failed to provide public notification regarding the failure to collect at least five routine distribution coliform samples the month following a total coliform-positive result for the month of January 2013.

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 1

90 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	X

mark only one with an x

Violation Base Penalty \$50

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$50

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5

Violation Final Penalty Total \$96

This violation Final Assessed Penalty (adjusted for limits) \$96

## Economic Benefit Worksheet

**Respondent** 73 LAND CORP., INC. dba Nutty Jerrys  
**Case ID No.** 47036  
**Reg. Ent. Reference No.** RN106239916  
**Media** Public Water Supply  
**Violation No.** 7

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

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

Notes for DELAYED costs

The delayed costs of compliance are captured in the Economic Benefit worksheet 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]	\$5	1-Feb-2013	30-Apr-2013	1.16	\$0	\$5	\$5
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount to provide public notification (\$5 x 1 notification), calculated for the period in which public notification was not provided.

Approx. Cost of Compliance

\$5

**TOTAL**

\$5



# TCEQ Compliance History Report

**PUBLISHED** Compliance History Report for CN603966706, RN106239916, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

**Customer, Respondent, or Owner/Operator:** CN603966706, 73 LAND CORP., INC.      **Classification:** NOT APPLICABLE      **Rating:** N/A  
**Regulated Entity:** RN106239916, NUTTY JERRYS      **Classification:** NOT APPLICABLE      **Rating:** N/A  
**Complexity Points:** N/A      **Repeat Violator:** N/A  
**CH Group:** 14 - Other  
**Location:** 18291 ENGLIN ROAD, JEFFERSON COUNTY, TEXAS  
**TCEQ Region:** REGION 10 - BEAUMONT  
**ID Number(s):**  
**PUBLIC WATER SYSTEM/SUPPLY REGISTRATION** 1230106

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

**Date Compliance History Report Prepared:** June 07, 2013

**Agency Decision Requiring Compliance History:** Enforcement

**Component Period Selected:** June 07, 2008 to June 07, 2013

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

**Name:** Lisa Arneson

**Phone:** (512) 239-1160

**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: 06/14/2012 (1037116)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)  
30 TAC Chapter 290, SubChapter F 290.122(f)

Description: DEC/2011 TCR Routine Monitoring PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct coliform monitoring for the month of 12/2011.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)  
30 TAC Chapter 290, SubChapter F 290.122(f)

Description: JAN/2012 TCR Routine Monitoring PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct coliform monitoring for the month of 01/2012.

2 Date: 07/06/2012 (1037116)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(c)(2)  
30 TAC Chapter 290, SubChapter F 290.122(f)

Description: FEB/2012 TCR Routine Monitoring PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct coliform monitoring for the month of 02/2012.

3 Date: 10/11/2012 (1037116)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(F)

Description: TCR Increase Monitoring Violation 07/2012 - Failure to collect all of the 5 distribution samples following a coliform found month.

4 Date: 11/06/2012 (1087898)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(4)(B)  
30 TAC Chapter 290, SubChapter F 290.109(e)

Description: GWR Triggered Source MR Violation 06/2012 - Failure to collect and/or report any triggered source monitoring sample(s) following a coliform found result for 1 source within the required timeline.

5 Date: 12/14/2012 (1087898)

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: JUN/2012 GWR Triggered Source Monitoring PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for failing to conduct triggered source monitoring for the month of 06/2012.

6 Date: 12/27/2012 (1087898)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)

Description: TCR MCL Violation 12/2012 - System exceeded a maximum contaminant level.

7 Date: 02/19/2013 (1087898)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.117(c)(2)(A)(i)  
30 TAC Chapter 290, SubChapter F 290.117(i)(1)

Description: PbCu IN MR 2nd 6M2012 - The system failed to monitor and/or report initial distribution lead and copper levels to the TCEQ for the six-month monitoring period from 07/01/2012 to 12/31/2012 within the required timeline.

8 Date: 02/27/2013 (1087898)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(4)(B)

Description: 30 TAC Chapter 290, SubChapter F 290.109(e)  
GWR Triggered Source MR Violation 12/2012 - Failure to collect and/or report any triggered source monitoring sample(s) following a coliform found result for 1 source within the required timeline.

9

Date: 04/25/2013 (1087898)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.122(b)(2)(B)  
30 TAC Chapter 290, SubChapter F 290.122(f)

Description: DEC/2012 TCR MCL PN Posting and Reporting Violation - Failure to submit a signed certificate of delivery to the Executive Director certifying that public notice was issued pursuant to 30 Tex. Admin. Code §290.122 during the time period that public notice was required for a maximum contaminant level violation during the month of 12/2012.

**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



<b>IN THE MATTER OF AN</b>	<b>§</b>	<b>BEFORE THE</b>
<b>ENFORCEMENT ACTION</b>	<b>§</b>	
<b>CONCERNING</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>73 LAND CORP., INC. DBA NUTTY</b>	<b>§</b>	
<b>JERRYS</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>RN106239916</b>	<b>§</b>	

**AGREED ORDER**  
**DOCKET NO. 2013-1127-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 73 LAND CORP., INC. dba Nutty Jerrys ( 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 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, 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 18291 Englin Road in Jefferson County, Texas (the "Facility") that has approximately two service connections and serves at least 25 people per day for at least 60 days per year.
2. During a record review conducted on October 1, 2012, TCEQ staff documented that the Respondent did not collect routine distribution water samples for coliform analysis and did not provide public notice of the failure to sample for the months of November 2011 through February 2012.
3. During a record review conducted on October 1, 2012, TCEQ staff documented that the Respondent collected only three of the required five routine distribution coliform samples for the month of July 2012.
4. During a record review conducted on April 22, 2013, TCEQ staff documented that the Respondent did not submit Disinfectant Level Quarterly Operating Reports ("DLQOR") to the Executive Director for the first through the fourth quarter of 2012.
5. During a record review conducted on April 22, 2013, TCEQ staff documented that the Respondent did not submit the results of semiannual lead and copper sampling to the Executive Director for July 1, 2012 through December 31, 2012 monitoring period.
6. During a record review conducted on April 22, 2013, TCEQ staff documented that the Respondent did not collect raw groundwater source *Escherichia coli* samples for the months of June 2012 and December 2012 and did not provide public notification regarding the failure to sample for the month of June 2012. Specifically, one raw groundwater source sample was required for June 2012 and three raw groundwater source samples were required for December 2012 and none were collected.
7. During a record review conducted on April 22, 2013, TCEQ staff documented that the Respondent did not comply with the maximum contaminant level for total coliform for the month of December 2012 and did not provide public notification regarding the exceedance of the maximum contaminant level for total coliform.
8. During a record review conducted on April 22, 2013, TCEQ staff documented that the Respondent did not provide public notification regarding the failure to collect at least five routine distribution coliform samples the month following a total coliform-positive result for the month of January 2013.
9. The Respondent received notice of the violations on October 24, 2012 and May 28, 2013.
10. The Executive Director recognizes that on June 19, 2013, the Facility consolidated water service by interconnecting to a consenting utility service provider that took sanitary control of the Facility's existing service connections, and the Facility was then inactivated as a public water supply.

## 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 collect routine distribution water samples for coliform analysis and failed to provide public notice of the failure to sample, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(2)(A)(i) and 290.122(c)(2)(B), and TEX. HEALTH & SAFETY CODE § 341.033(d).
3. As evidenced by Findings of Fact No. 3, the Respondent failed to collect at least five routine distribution coliform samples the month following a coliform-positive sample result for the month of July 2012, in violation of 30 TEX. ADMIN. CODE § 290.109(c)(2)(F).
4. As evidenced by Findings of Fact No. 4, the Respondent failed to submit a DLQOR to the Executive Director each quarter by the tenth day of the month following the end of each quarter, in violation of 30 TEX. ADMIN. CODE § 290.110(e)(4)(A) and (f)(3).
5. As evidenced by Findings of Fact No. 5, the Respondent failed to provide the results of semiannual lead and copper sampling to the Executive Director, in violation of 30 TEX. ADMIN. CODE § 290.117(i)(1).
6. As evidenced by Findings of Fact No. 6, the Respondent failed to collect raw groundwater source *Escherichia coli* samples from all active sources within 24 hours of notification of a distribution total coliform-positive sample and failed to provide public notification regarding the failure to conduct triggered source monitoring, in violation of 30 TEX. ADMIN. CODE §§ 290.109(c)(4)(B) and 290.122(c)(2)(A).
7. As evidenced by Findings of Fact No. 7, the Respondent failed to comply with maximum contaminant level for total coliform and failed to provide public notification regarding the exceedance of the maximum contaminant level for total coliform, in violation of 30 TEX. ADMIN. CODE §§ 290.109(f)(3) and 290.122(b)(2)(B) and TEX. HEALTH & SAFETY CODE § 341.031(a).
8. As evidenced by Findings of Fact No. 8, the Respondent failed to provide public notification regarding the failure to collect at least five routine distribution coliform samples the month following a total coliform-positive sample, in violation of 30 TEX. ADMIN. CODE § 290.122(c)(2)(A).
9. 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.

10. An administrative penalty in the amount of Two Thousand Eight Hundred Seventy-Seven Dollars (\$2,877) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The Respondent has paid the Two Thousand Eight Hundred Seventy-Seven Dollar (\$2,877) administrative penalty.

### III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Two Thousand Eight Hundred Seventy-Seven Dollars (\$2,877) as set forth in Section II, Paragraph 10 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: 73 LAND CORP., INC. dba Nutty Jerrys, Docket No. 2013-1127-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, 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 § 290.117 (Lead and Copper).
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

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

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
6. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or

otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

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

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

Perm Manning  
For the Executive Director

4/28/14  
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of 73 LAND CORP., INC. dba Nutty Jerrys I am authorized to agree to the attached Agreed Order on behalf of 73 LAND CORP., INC. dba Nutty Jerrys, 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, 73 LAND CORP., INC. dba Nutty Jerrys 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

JERRY NELSON JR.  
Name (Printed or typed)  
Authorized Representative of  
73 LAND CORP., INC. dba Nutty Jerrys

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

11/22/2013

President

**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