

**Executive Summary – Enforcement Matter – Case No. 50497**  
**Cole DG Lubbock (FM 40) TX, LLC dba Dollar General Store 14889**  
**RN106882061**  
**Docket No. 2015-0697-PWS-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

**Media:**

PWS

**Small Business:**

No

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

Dollar General Store 14889, 4507 East 4th Street near Lubbock, Lubbock 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:** August 14, 2015

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$390

**Amount Deferred for Naturally Occurring Inorganic Contaminants:** \$390

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

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

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

Payment Plan: N/A

**Supplemental Environmental Project ("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:** April 2014

**Executive Summary – Enforcement Matter – Case No. 50497  
Cole DG Lubbock (FM 40) TX, LLC dba Dollar General Store 14889  
RN106882061  
Docket No. 2015-0697-PWS-E**

***Investigation Information***

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

**Complaint Information:** N/A

**Date(s) of Investigation:** April 20, 2015 through May 1, 2015

**Date(s) of NOE(s):** May 1, 2015

***Violation Information***

Failed to comply with the acute maximum contaminant level ("MCL") of 10 milligrams per liter ("mg/L") for nitrate and failed to post public notification and submit a copy of the public notification to the Executive Director ("ED") regarding the failure to comply with the acute MCL for nitrate [30 TEX. ADMIN. CODE §§ 290.106(f)(2) and 290.122(a)(2) and (f) and TEX. HEALTH & SAFETY CODE § 341.031(a)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

- a. Within 30 days:
  - i. Implement procedures to ensure that all public notifications are provided in a timely manner to persons served by the Facility and a copy of the public notification is submitted to the ED; and
  - ii. Provide public notification regarding the failure to comply with the acute MCL of 10 mg/L for nitrate for the first quarter of 2015 and provide a copy of public notification to the ED.
- b. Within 45 days, submit written certification to demonstrate compliance with a.
- c. Within 120 days, complete a feasibility study, or update an existing feasibility study, and submit a written report or engineering study conducted by a Texas registered professional engineer regarding the results of the feasibility study to evaluate the necessary corrective actions designed to achieve compliance with the acute MCL for nitrate. The report shall include a tentative schedule describing additional studies, tests, or other methods that may be utilized for the completion of necessary corrective actions within 1,095 days. If the Respondent purchases or sells water, a copy of the purchase water contract must be submitted with the feasibility study report or engineering study.

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- d. Within 135 days, submit written certification to demonstrate compliance with c.
- e. Within 180 days, submit an acceptable written plan, including a proposed schedule, to the ED that provides for the completion of an alternate water source or treatment technology.
- f. Within 180 days, and on a semiannual basis thereafter, submit progress reports. These reports shall include information regarding actions taken to provide water which meets the acute MCL for nitrate.
- g. Within 195 days, submit written certification to demonstrate compliance with e.
- h. Within 1,095 days, return to compliance with the acute MCL for nitrate.
- i. Within 1,110 days, submit written certification to demonstrate compliance with h.

***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:** Yuliya Dunaway, Enforcement Division, Enforcement Team 2, MC R-13, (210) 403-4077; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456  
**TCEQ SEP Coordinator:** N/A  
**Respondent:** Daniel T. Haug, Vice President, Cole DG Lubbock (FM 40) TX, LLC, 2325 East Camelback Road, Suite 1100, Phoenix, Arizona 85016  
Mara Maloney, Authorized Officer, Cole DG Lubbock (FM 40) TX, LLC, 2325 East Camelback Road, Suite 1100, Phoenix, Arizona 85016  
**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	4-May-2015			
	<b>PCW</b>	8-May-2015	<b>Screening</b>	8-May-2015	<b>EPA Due</b> 30-Jun-2015

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Cole DG Lubbock (FM 40) TX, LLC dba Dollar General Store 14889
<b>Reg. Ent. Ref. No.</b>	RN106882061
<b>Facility/Site Region</b>	2-Lubbock
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	50497	<b>No. of Violations</b>	1
<b>Docket No.</b>	2015-0697-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>	Yuliya Dunaway
		<b>EC's Team</b>	Enforcement Team 2
<b>Admin. Penalty \$ Limit Minimum</b>	\$50	<b>Maximum</b>	\$1,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$300</b>
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### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

<b>Compliance History</b>	30.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$90</b>
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Notes: Enhancement for two NOV's with the same/similar violations and one agreed order containing a denial of liability.

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

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$11,335
Estimated Cost of Compliance	\$45,105

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$390</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<b>Final Penalty Amount</b>	<b>\$390</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$390</b>
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

<b>PAYABLE PENALTY</b>	<b>\$390</b>
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**Screening Date** 8-May-2015

**Docket No.** 2015-0697-PWS-E

**PCW**

**Respondent** Cole DG Lubbock (FM 40) TX, LLC dba Dollar General Store 14889

Policy Revision 4 (April 2014)

**Case ID No.** 50497

PCW Revision March 26, 2014

**Reg. Ent. Reference No.** RN106882061

**Media [Statute]** Public Water Supply

**Enf. Coordinator** Yuliya Dunaway

### 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> )	2	10%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments 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)** 30%

>> **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 two NOVs with the same/similar violations and one agreed order containing a denial of liability.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** 30%

>> **Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** 30%

Screening Date 8-May-2015

Docket No. 2015-0697-PWS-E

PCW

Respondent Cole DG Lubbock (FM 40) TX, LLC dba Dollar General Store 14889

Policy Revision 4 (April 2014)

Case ID No. 50497

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106882061

Media [Statute] Public Water Supply

Enf. Coordinator Yuliya Dunaway

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 290.106(f)(2) and 290.122(a)(2) and (f) and Tex. Health & Safety Code § 341.031(a)

Violation Description Failed to comply with the acute maximum contaminant level ("MCL") of 10 milligrams per liter ("mg/L") for nitrate and failed to post public notification and submit a copy of the public notification to the Executive Director regarding the failure to comply with the acute MCL for nitrate. Specifically, at the time of the record review, it was documented that the single sample concentration for nitrate was 11 mg/L for the first quarter of 2015 and public notification was not posted regarding the failure to comply with the acute MCL for nitrate for the first quarter of 2015.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	x			30.0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

Matrix Notes Exceeding the acute MCL for nitrate and failure to provide public notification caused the customers of the Facility to be exposed to pollutants which exceed levels protective of human health.

Adjustment \$700

\$300

Violation Events

Number of Violation Events 1 Number of violation days 90

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

Violation Base Penalty \$300

One quarterly event is recommended.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/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 \$11,335

Violation Final Penalty Total \$390

This violation Final Assessed Penalty (adjusted for limits) \$390

## Economic Benefit Worksheet

**Respondent** Cole DG Lubbock (FM 40) TX, LLC dba Dollar General Store 14889  
**Case ID No.** 50497  
**Reg. Ent. Reference No.** RN106882061  
**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)	\$45,000	31-Mar-2015	3-Nov-2018	3.60	\$540	\$10,792	\$11,332
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	20-Apr-2015	4-Dec-2015	0.62	\$3	n/a	\$3
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$5	14-Feb-2015	4-Dec-2015	0.80	\$0	n/a	\$0

**Notes for DELAYED costs**

The delayed costs include the estimated amount to investigate, identify, and implement the necessary corrective actions to return to compliance with the acute MCL for nitrate, calculated from the last day of the quarter of non-compliance to the estimated date of compliance. The training delayed costs include the estimated amount to develop and implement procedures to ensure that all necessary public notifications are provided in a timely manner, calculated from the date of the record review to the estimated date of compliance. The other delayed costs include the estimated amount to provide public notification regarding the failure to comply with the acute MCL for nitrate for the first quarter of 2015 (\$5 per notification), calculated from the due date of public notification 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

\$45,105

**TOTAL**

\$11,335



# Compliance History Report

**PUBLISHED** Compliance History Report for CN604629576, RN106882061, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

<b>Customer, Respondent, or Owner/Operator:</b>	CN604629576, Cole DG Lubbock (FM 40) TX, LLC	<b>Classification:</b> NOT APPLICABLE	<b>Rating:</b> N/A
<b>Regulated Entity:</b>	RN106882061, DOLLAR GENERAL STORE 14889	<b>Classification:</b> NOT APPLICABLE	<b>Rating:</b> N/A
<b>Complexity Points:</b>	N/A	<b>Repeat Violator:</b>	N/A
<b>CH Group:</b>	14 - Other		
<b>Location:</b>	4507 E 4TH ST NEAR LUBBOCK, LUBBOCK COUNTY, TX		
<b>TCEQ Region:</b>	REGION 02 - LUBBOCK		
<b>ID Number(s):</b>	PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 1520286		

<b>Compliance History Period:</b>	September 01, 2009 to August 31, 2014	<b>Rating Year:</b>	2014	<b>Rating Date:</b>	09/01/2014
<b>Date Compliance History Report Prepared:</b>	May 08, 2015				
<b>Agency Decision Requiring Compliance History:</b>	Enforcement				
<b>Component Period Selected:</b>	May 08, 2010 to May 08, 2015				
<b>TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.</b>					
<b>Name:</b>	Yuliya Dunaway		<b>Phone:</b>	(210) 403-4077	

## 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? YES
- 3) If **YES** for #2, who is the current owner/operator? Cole DG Lubbock (FM 40) TX, LLC OWNER since 6/4/2014
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? RSBR Investments, LLC, OWNER, 8/20/2013 to 6/3/2014
- 5) If **YES**, when did the change(s) in owner or operator occur? 6/4/2014

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

### A. Final Orders, court judgments, and consent decrees:

- 1 Effective Date: 03/15/2015 ADMINORDER 2014-1033-PWS-E (1660 Order-Agreed Order With Denial)  
Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(J)  
Description: Failure to provide the well with a concrete sealing block that extends a minimum of three feet from the well casing in all directions, with a minimum thickness of six inches and sloped to drain away at not less than 0.25 inch per foot.  
Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(M)  
Description: Failure to provide a suitable sampling cock on the discharge pipe of the Facility's well pump prior to any treatment.  
Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(N)  
Description: Failure to provide a flow measuring device for the Facility's well to measure production yields and provide for the accumulation of water production data.  
Classification: Moderate  
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(O)  
Description: Failure to provide an intruder-resistant fence with lockable gates or a locked, ventilated well house in order to protect the Facility's well.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(d)(2)(A)  
30 TAC Chapter 290, SubChapter F 290.110(b)(4)  
5A THSC Chapter 341, SubChapter A 341.0315(c)

Description: Failure to maintain a disinfectant residual of at least 0.2 milligrams per liter ("mg/L") of free chlorine throughout the distribution system at all times. Specifically, on June 4, 2014, a field sample obtained at the janitor's sink measured a free chlorine residual of 0.02 mg/L and on June 5, 2014, a field sample obtained at the janitor's sink measured a free chlorine residual of 0.01 mg/L.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter D 290.46(f)(2)  
30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(i)(III)  
30 TAC Chapter 290, SubChapter D 290.46(f)(3)(B)(iii)

Description: Failure to maintain water works operation and maintenance activities records. Specifically, it was documented that the Facility was not maintaining records of the amount of chemicals used each week and the disinfection residual monitoring results from the distribution system.

Classification: Moderate

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

Description: Failure to develop and maintain a complete, thorough, and up-to-date plant operations manual for operator review and reference.

Classification: Moderate

Citation: 30 TAC Chapter 290, SubChapter F 290.121(a)  
30 TAC Chapter 290, SubChapter F 290.121(b)

Description: Failure to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the Facility will use to comply with the monitoring requirements.

**B. Criminal convictions:**

N/A

**C. Chronic excessive emissions events:**

N/A

**D. The approval dates of investigations (CCEDS Inv. Track. No.):**

Item 1            March 17, 2015                    (1230280)

**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:        | 02/13/2015  | (1247170) | CN604629576              |
|   | Self Report? | NO  |           | Classification: Major    |
|   | Citation:    | 30 TAC Chapter 290, SubChapter F 290.106(f)(2)  |           |                          |
|   | Description: | NO3 AMCL 1Q2015 - This system exceeded the MCL of 10 mg/L for nitrate (as nitrogen) with a sample result of 11 mg/L collected on 02/10/2015.  |           |                          |
| 2 | Date:        | 03/31/2015  | (1247170) | CN604629576              |
|   | Self Report? | NO  |           | Classification: Moderate |
|   | Citation:    | 30 TAC Chapter 290, SubChapter F 290.122(a)(2)<br>30 TAC Chapter 290, SubChapter F 290.122(f)   |           |                          |
|   | Description: | NO3 AMCL PN 1Q2015 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 violation of the maximum contaminant level for nitrate during the first quarter of 2015. |           |                          |

**F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	
COLE DG LUBBOCK (FM 40) TX,	§	TEXAS COMMISSION ON
LLC DBA DOLLAR GENERAL STORE	§	
14889	§	
RN106882061	§	ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2015-0697-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 Cole DG Lubbock (FM 40) TX, LLC dba Dollar General Store 14889 ("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 located at 4507 East 4th Street near Lubbock, Lubbock County, Texas (the "Facility") that has one service connection and serves at least 25 people per day for at least 60 days per year.
2. During a record review conducted from April 20, 2015 through May 1, 2015, TCEQ staff documented that the single sample concentration for nitrate was 11 milligrams per liter ("mg/L") for the first quarter of 2015 and public notification was not posted regarding the failure to comply with the acute maximum contaminant level ("MCL") for nitrate for the first quarter of 2015.
3. The Respondent received notice of the violations on May 6, 2015.

### 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 comply with the acute MCL of 10 mg/L for nitrate and failed to post public notification and submit a copy of the public notification to the Executive Director regarding the failure to comply with the acute MCL for nitrate, in violation of 30 TEX. ADMIN. CODE §§ 290.106(f)(2) and 290.122(a)(2) and (f) and TEX. HEALTH & SAFETY CODE § 341.031(a).
3. 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.
4. An administrative penalty in the amount of Three Hundred Ninety Dollars (\$390) 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). Three Hundred Ninety Dollars (\$390) of the administrative penalty is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order and shall be waived only upon full compliance with all the terms and conditions contained in this Agreed Order. If the Respondent fails to timely and satisfactorily comply with any requirement contained in this Agreed Order, the deferred amount of the administrative penalty shall become immediately due and payable without demand or notice, and the Executive Director may require Respondent to pay all or part of the deferred 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 Three Hundred Ninety Dollars (\$390) as set forth in Section II, Paragraph 4 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: Cole DG Lubbock (FM 40) TX, LLC dba Dollar General Store 14889, Docket No. 2015-0697-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. Implement procedures to ensure that all public notifications are provided in a timely manner to persons served by the Facility and a copy of the public notification is submitted to the Executive Director, in accordance with 30 TEX. ADMIN. CODE § 290.122; and
    - ii. Provide public notification regarding the failure to comply with the acute MCL of 10 mg/L for nitrate for the first quarter of 2015 and provide a copy of public notification to the Executive Director, in accordance with 30 TEX. ADMIN. CODE § 290.122.
  - b. Within 45 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.i. below to demonstrate compliance with Ordering Provision No. 2.a.;
  - c. Within 120 days after the effective date of this Agreed Order, complete a feasibility study, or update an existing feasibility study, and submit a written report or engineering study conducted by a Texas registered professional engineer regarding the results of the feasibility study to evaluate the necessary corrective actions designed to achieve compliance with the acute MCL for nitrate. The report shall include a tentative schedule describing additional studies, tests,

or other methods that may be utilized for the completion of necessary corrective actions within 1,095 days after the effective date of this Agreed Order. If the Respondent purchases or sells water, a copy of the purchase water contract must be submitted with the feasibility study report or engineering study. The evaluation shall be sent to the addresses in listed in Ordering Provision No. 2.i.;

- d. Within 135 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.i. below to demonstrate compliance with Ordering Provision No. 2.c.;
- e. Within 180 days after the effective date of this Agreed Order, submit an acceptable written plan, including a proposed schedule, to the Executive Director that provides for the completion of an alternate water source or treatment technology to the addresses listed in Ordering Provision No. 2.i.;
- f. Within 180 days after the effective date of this Agreed Order, and on a semi-annual basis thereafter, submit progress reports to the addresses listed in Ordering Provision No. 2.i. below. These reports shall include information regarding actions taken to provide water which meets the acute MCL for nitrate;
- g. Within 195 days after the effective date of this Agreed Order, submit written certification as described in Ordering Provision No. 2.i. below to demonstrate compliance with Ordering Provision No. 2.e.;
- h. Within 1,095 days after the effective date of this Agreed Order, return to compliance with the acute MCL for nitrate, in accordance with 30 TEX. ADMIN. CODE § 290.106; and
- i. Within 1,110 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.h. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The certification shall be submitted to:

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

with a copy to:

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

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

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

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

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

*Pam Reynolds*  
For the Executive Director

10/7/15  
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Cole DG Lubbock (FM 40) TX, LLC dba Dollar General Store 14889. I am authorized to agree to the attached Agreed Order on behalf of Cole DG Lubbock (FM 40) TX, LLC dba Dollar General Store 14889, 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, Cole DG Lubbock (FM 40) TX, LLC dba Dollar General Store 14889 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.

By: Cole REIT Advisors IV, LLC, a Delaware limited liability company, its manager

*Mara Maloney*  
Signature

7/27/15  
Date

Mara Maloney  
Name (Printed or typed)

Authorized Officer  
Title

Authorized Representative of  
Cole DG Lubbock (FM 40) TX, LLC dba Dollar General Store 14889

**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.