

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 41689
BRUSH COUNTRY DEVELOPMENT CORPORATION
RN106103765
Docket No. 2013-1883-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Indifference to legal duty based on violation of a previous order.

Media:

PWS

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

5087 Texas Highway 44, Freer, Duval County

Type of Operation:

public water system

Other Significant Matters:

Additional Pending Enforcement Actions: 2014-0805-PWS-E (AO published October 3, 2014)
Past-Due Penalties: None
Past-Due Fees: None
Other: None
Interested Third-Parties: None

Texas Register Publication Date: October 10, 2014

Comments Received: None

Penalty Information

Total Penalty Assessed: \$3,969

Total Paid to General Revenue: \$3,969

Total Due to General Revenue: \$0

Compliance History Classifications:

Person/CN – Unclassified
Site/RN – N/A

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: July 22, 2013

Date(s) of NOV(s): March 25, 2013

Date(s) of NOE(s): September 12, 2013

Violation Information

1. Failed to submit engineering plans and specifications and receive written approval prior to beginning construction of the Facility [TEX. HEALTH & SAFETY CODE § 341.035(a); 30 TEX. ADMIN. CODE § 290.39(e)(1), 290.39(e)(3), and 290.39(h)(1); and TCEQ Agreed Order Docket No. 2011-0796-PWS-E, Ordering Provisions Nos. 2.c.i. and 2.e.].
2. Failed to provide the Facility's ground storage tanks ("GST") with an overflow that is designed in strict accordance with current American Water Works Association ("AWWA") standards and with an overflow pipe that terminates downward with a gravity-hinged and weighted cover tightly fitted with no gap over 1/16 inch [30 TEX. ADMIN. CODE § 290.43(c)(3) and TCEQ Agreed Order Docket No. 2011-0796-PWS-E, Ordering Provision No. 2.a.].
3. Failed to submit well completion data for review and approval prior to placing a public drinking water well into service [30 TEX. ADMIN. CODE § 290.41(c)(3)(A) and TCEQ Agreed Order Docket No. 2011-0796-PWS-E, Ordering Provisions Nos. 2.c.ii. and 2.e.].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 60 days, provide the GST with an overflow that meets current AWWA design standards and with an overflow pipe that terminates downward with a gravity-hinged and weighted cover tightly fitted with no gap over 1/16 inch.
2. Within 180 days:
 - a. Submit as-built plans, specifications and engineering reports for the Facility; and
 - b. Submit well completion data for review and approval.
3. Submit written certification to document compliance:
 - a. Within 75 days for Technical Requirement No. 1; and
 - b. Within 195 days for Technical Requirements Nos. 3.a. and 3.b.

Litigation Information

Date Petition(s) Filed: January 14, 2014
Date Answer(s) Filed: January 30, 2014
SOAH Referral Date: April 9, 2014
Hearing Date(s):
Preliminary Hearing: June 5, 2014 (waived)
Evidentiary Hearing: October 23, 2014 (scheduled)
Settlement Date: September 17, 2014

Contact Information

TCEQ Attorneys: Tammy Mitchell, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Eli Martinez, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: Katy Montgomery, Enforcement Division, (210) 403-4016
TCEQ Regional Contact: Arnaldo Lanese, Laredo Regional Office, (956) 791-6611
Respondent Contact: William Humiston, President, BRUSH COUNTRY DEVELOPMENT CORPORATION, 400 Mann Street, Suite 708, Corpus Christi, Texas 78401
Respondent's Attorney: Kim Cox, 701 Ayers Street, Corpus Christi, Texas 78404



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	23-Sep-2013			
	PCW	29-Oct-2013	Screening	1-Oct-2013	EPA Due

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

CASE INFORMATION			
Enf./Case ID No.	41689	No. of Violations	3
Docket No.	2013-1883-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Katy Montgomery
		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,700
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ADJUSTMENTS (+/-) TO SUBTOTAL 1	
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.	
Compliance History	47.0% Enhancement Subtotals 2, 3, & 7 \$1,269

Notes: Enhancement for one NOV with dissimilar violations, one agreed order with a denial of liability and one agreed order without a denial of liability.

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

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$1,605
 Approx. Cost of Compliance: \$6,700
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,969
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$3,969
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,969
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction)

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$3,969
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Screening Date 1-Oct-2013

Docket No. 2013-1883-PWS-E

PCW

Respondent BRUSH COUNTRY DEVELOPMENT CORPORATION

Policy Revision 3 (September 2011)

Case ID No. 41689

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106103765

Media [Statute] Public Water Supply

Enf. Coordinator Katy Montgomery

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>)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	1	25%
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) 47%

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

N/A

Adjustment Percentage (Subtotal 3) 0%

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

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for one NOV with dissimilar violations, one agreed order with a denial of liability and one agreed order without a denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 47%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 47%

Screening Date 1-Oct-2013 **Docket No.** 2013-1883-PWS-E **PCW**
Respondent BRUSH COUNTRY DEVELOPMENT CORPORATION *Policy Revision 3 (September 2011)*
Case ID No. 41689 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN106103765
Media [Statute] Public Water Supply
Enf. Coordinator Katy Montgomery

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 290.39(e)(1), (e)(3) and (h)(1), Tex. Health & Safety Code § 341.035(a) and TCEQ Agreed Order Docket No. 2011-0796-PWS-E, Ordering Provision Nos. 2.c.i. and 2.e.

Violation Description

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

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>

Percent

Matrix Notes

100% of the rule requirements were not met.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input checked="" type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Twenty-three monthly events are recommended, calculated from the effective date of TCEQ Agreed Order Docket No. 2011-0796-PWS-E, November 18, 2011, to the screening date, October 1, 2013.

Good Faith Efforts to Comply

Reduction

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

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

Violation Subtotal

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent BRUSH COUNTRY DEVELOPMENT CORPORATION
Case ID No. 41689
Reg. Ent. Reference No. RN106103765
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$5,000	18-Nov-2011	30-Apr-2015	3.45	\$57	\$1,150	\$1,207
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 have a professional engineer prepare and submit as-built plans and specifications of the existing Facility to the TCEQ for review and approval, calculated from the effective date of TCEQ Agreed Order Docket No. 2011-0796-PWS-E 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 \$5,000

TOTAL \$1,207

Screening Date 1-Oct-2013 **Docket No.** 2013-1883-PWS-E **PCW**
Respondent BRUSH COUNTRY DEVELOPMENT CORPORATION *Policy Revision 3 (September 2011)*
Case ID No. 41689 *PCW Revision August 3, 2011*
Reg. Ent. Reference No. RN106103765
Media [Statute] Public Water Supply
Enf. Coordinator Katy Montgomery

Violation Number
Rule Cite(s) 30 Tex. Admin. Code § 290.43(c)(3) and TCEQ Agreed Order Docket No. 2011-0796-PWS-E, Ordering Provision No. 2.a.
Violation Description Failed to provide the Facility's ground storage tank ("GST") with an overflow that is designed in strict accordance with current American Water Works Association ("AWWA") standards with an overflow pipe that terminates downward with a gravity-hinged and weighted cover tightly fitted with no gap over 1/16 inch. Specifically, at the time of the investigation, it was documented that the overflow on the GST did not have a screen or cover.

Base Penalty

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5.0%"/>
	Potential	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	

>> **Programmatic Matrix**

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

Matrix Notes Without a proper cover installed on the overflow pipe, insects or animals could enter the ground storage tank and expose consumers to a significant amount of contaminants which would not exceed levels protective of human health.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input checked="" type="text" value="x"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Eight quarterly events are recommended, calculated from the effective date of TCEQ Agreed Order Docket No. 2011-0796-PWS-E, November 18, 2011, to the screening date, October 1, 2013.

Good Faith Efforts to Comply Reduction

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

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

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent BRUSH COUNTRY DEVELOPMENT CORPORATION
Case ID No. 41689
Reg. Ent. Reference No. RN106103765
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	\$200	18-Nov-2011	31-May-2014	2.53	\$2	\$34	\$35
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 provide the GST with an overflow that meets current AWWA standards, calculated from the effective date of TCEQ Agreed Order Docket No. 2011-0796-PWS-E 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 \$200

TOTAL \$35

Screening Date 1-Oct-2013

Docket No. 2013-1883-PWS-E

PCW

Respondent BRUSH COUNTRY DEVELOPMENT CORPORATION

Policy Revision 3 (September 2011)

Case ID No. 41689

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN106103765

Media [Statute] Public Water Supply

Enf. Coordinator Katy Montgomery

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 290.41(c)(3)(A) and TCEQ Agreed Order Docket No. 2011-0796-PWS-E, Ordering Provision Nos. 2.c.ii. and 2.e.

Violation Description

Failed to submit well completion data for review and approval prior to placing a public drinking water well into service.

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 23

683 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$1,150

Twenty-three monthly events are recommended, calculated from the effective date of TCEQ Agreed Order Docket No. 2011-0796-PWS-E, November 18, 2011, to the screening date, October 1, 2013.

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 \$1,150

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$362

Violation Final Penalty Total \$1,691

This violation Final Assessed Penalty (adjusted for limits) \$1,691

Economic Benefit Worksheet

Respondent BRUSH COUNTRY DEVELOPMENT CORPORATION
Case ID No. 41689
Reg. Ent. Reference No. RN106103765
Media Public Water Supply
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)	\$1,500	18-Nov-2011	30-Apr-2015	3.45	\$17	\$345	\$362
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 compile well completion data and submit it to the Executive Director for approval, calculated from the effective date of TCEQ Agreed Order Docket No. 2011 0796-PWS-E to the estimated date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance	\$1,500	TOTAL	\$362
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The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PENDING Compliance History Report for CN603825431, RN106103765, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN603825431, BRUSH COUNTRY DEVELOPMENT CORPORATION
Classification: UNCLASSIFIED **Rating:** -----
Regulated Entity: RN106103765, US BORDER PATROL STATION FREER
Classification: NOT APPLICABLE **Rating:** N/A
Complexity Points: N/A **Repeat Violator:** N/A
CH Group: 14 - Other
Location: 5087 TEXAS HIGHWAY 44, DUVAL COUNTY, TEXAS
TCEQ Region: REGION 16 - LAREDO
ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 0660022

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: October 01, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: October 01, 2008 to October 01, 2013

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

Name: Katy Montgomery

Phone: (210) 403-4016

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:

1 Effective Date: 11/18/2011 ADMINORDER 2011-0796-PWS-E (1660 Order-Agreed Order With Denial)

Classification: Major
Citation: 30 TAC Chapter 290, SubChapter D 290.42(b)(1)
Description: Failure to provide disinfection facilities for microbiological control and distribution protection.
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.43(c)(3)
Description: Failure to provide an overflow on the Facility's ground storage tank that is designed in strict accordance with American Water Works Association standards.
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.39(e)(1)
30 TAC Chapter 290, SubChapter D 290.39(e)(3)
30 TAC Chapter 290, SubChapter D 290.39(h)(1)
5A THSC Chapter 341, SubChapter A 341.035(c)
Description: Failed to submit engineering plans and specifications and receive written approval prior to beginning construction of a new public water supply system.
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter D 290.41(c)(3)(A)
Description: Failure to submit well completion data before placing the well into service as a public water system.

2 Effective Date: 06/03/2013 ADMINORDER 2012-1188-PWS-E (Findings Order-Agreed Order Without Denial)

Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
5A THSC Chapter 341, SubChapter A 341.033(d)
Description: TCR Routine Monitoring Violation 08/2011 - Failure to collect any routine monitoring sample(s).
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
5A THSC Chapter 341, SubChapter A 341.033(d)
Description: TCR Routine Monitoring Violation 09/2011 - Failure to collect any routine monitoring sample(s).
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
5A THSC Chapter 341, SubChapter A 341.033(d)
Description: TCR Routine Monitoring Violation 10/2011 - Failure to collect any routine monitoring sample(s).
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
5A THSC Chapter 341, SubChapter A 341.033(d)
Description: TCR Routine Monitoring Violation 11/2011 - Failure to collect any routine monitoring sample(s).
Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
5A THSC Chapter 341, SubChapter A 341.033(d)
Description: TCR Routine Monitoring Violation 12/2011 - Failure to collect any routine monitoring sample(s).

Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 5A THSC Chapter 341, SubChapter A 341.033(d)
 Description: TCR Routine Monitoring Violation 01/2012 - Failure to collect any routine monitoring sample(s).
 Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 5A THSC Chapter 341, SubChapter A 341.033(d)
 Description: TCR Routine Monitoring Violation 02/2012 - Failure to collect any routine monitoring sample(s).
 Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 5A THSC Chapter 341, SubChapter A 341.033(d)
 Description: TCR Routine Monitoring Violation 04/2011 - Failure to collect any routine monitoring sample(s).
 Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 5A THSC Chapter 341, SubChapter A 341.033(d)
 Description: TCR Routine Monitoring Violation 05/2011 - Failure to collect any routine monitoring sample(s).
 Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 5A THSC Chapter 341, SubChapter A 341.033(d)
 Description: TCR Routine Monitoring Violation 06/2011 - Failure to collect any routine monitoring sample(s).
 Classification: Moderate
 Citation: 30 TAC Chapter 290, SubChapter F 290.109(c)(2)(A)(i)
 5A THSC Chapter 341, SubChapter A 341.033(d)
 Description: TCR Routine Monitoring Violation 07/2011 - Failure to collect any routine monitoring sample(s).

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: 03/25/2013 (1074365) CN603825431**
- | | | | |
|--------------|---|-----------------|----------|
| Self Report? | NO | Classification: | Minor |
| Citation: | 30 TAC Chapter 290, SubChapter F 290.121(a) | | |
| Description: | Failure to maintain an up-to-date chemical and microbiological monitoring plan. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.46(n)(2) | | |
| Description: | Failure to provide the investigator with an accurate and up to date map of the distribution system locating valves and mains. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.46(f)(3)(A)(ii)(III) | | |
| Description: | Failure to maintain records of the amount of water treated on a weekly basis. | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 290, SubChapter D 290.46(m)(1)(C) | | |
| Description: | Failure to inspect all tanks annually to determine that instrumentation and controls are working properly. | | |

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
BRUSH COUNTRY DEVELOPMENT
CORPORATION;
RN106103765**

§
§
§
§
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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2013-1883-PWS-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding BRUSH COUNTRY DEVELOPMENT CORPORATION ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Mr. Kim Cox, presented this Agreed Order to the Commission.

Respondent understands that it has certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, the right to an evidentiary hearing, notice of an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Respondent.

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

FINDINGS OF FACT

1. Respondent owns a public water system located at 5087 Texas Highway 44 in Freer, Duval County, Texas (the "Facility"). The Facility provides water for human consumption, has approximately one service connection, and serves at least 25 people per day for at least 60 days per year. As such, the Facility is a public water system as defined in 30 TEX. ADMIN. CODE § 290.38(66).
2. During a record review conducted on July 22, 2013, TCEQ Central Office staff documented that Respondent:
 - a. Failed to submit engineering plans and specifications and receive written approval prior to beginning construction of the Facility;
 - b. Failed to provide the Facility's ground storage tank ("GST") with an overflow that is designed in strict accordance with current American Water Works Association ("AWWA") standards and with an overflow pipe that terminates downward with a gravity-hinged and weighted cover tightly fitted with no gap over 1/16 inch. Specifically, the overflow on the GST did not have a screen or cover; and
 - c. Failed to submit well completion data for review and approval prior to placing a public drinking water well into service.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE CH. 341 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to submit engineering plans and specifications and receive written approval prior to beginning construction of the Facility, in violation of TEX. HEALTH & SAFETY CODE § 341.035(a); 30 TEX. ADMIN. CODE § 290.39(e)(1), 290.39(e)(3), and 290.39(h)(1); and TCEQ Agreed Order Docket No. 2011-0796-PWS-E, Ordering Provisions Nos. 2.c.i. and 2.e.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to provide the Facility's GST with an overflow that is designed in strict accordance with current AWWA standards and with an overflow pipe that terminates downward with a gravity-hinged and weighted cover tightly fitted with no gap over 1/16 inch, in violation of 30 TEX. ADMIN. CODE § 290.43(c)(3) and TCEQ Agreed Order Docket No. 2011-0796-PWS-E, Ordering Provision No. 2.a.
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to submit well completion data for review and approval prior to placing a public drinking water well into service, in violation of 30 TEX. ADMIN. CODE § 290.41(c)(3)(A) and TCEQ Agreed Order Docket No. 2011-0796-PWS-E, Ordering Provisions Nos. 2.c.ii. and 2.e.
5. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, TCEQ has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of three thousand nine hundred sixty-nine dollars (\$3,969.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049. Respondent paid three thousand nine hundred sixty-nine dollars (\$3,969.00) of the administrative penalty.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 6, above, for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the matters set forth by this Agreed Order in this action. The Commission shall not be constrained in any manner from considering or requiring corrective actions or penalties for violations which are not raised here
2. Respondent shall undertake the following technical requirements:
 - a. Within 60 days after the effective date of this Agreed Order, Respondent shall provide the GST with an overflow that meets current AWWA design standards and with an overflow pipe that terminates downward with a gravity-hinged and weighted cover tightly fitted with no gap over 1/16 inch, in accordance with 30 TEX. ADMIN. CODE § 290.43.
 - b. Within 75 days after the effective date of this Agreed Order, Respondent shall submit written certification, in accordance with Ordering Provision No. 2.e., below, to demonstrate compliance with Ordering Provision No. 2.a.
 - c. Within 180 days after the effective date of this Agreed Order, Respondent shall:

- i. Submit as-built plans, specifications and engineering reports for the Facility, in accordance with 30 TEX. ADMIN. CODE § 290.39. The plans, specifications and reports shall be submitted to the address specified in Ordering Provision No. 2.c.ii. below; and
- ii. Submit well completion data for review and approval, in accordance with 30 TEX. ADMIN. CODE § 290.41. The well completion data shall be submitted to:

Utilities Technical Review
Plan and Groundwater Section, MC 159
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Respondent shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning as-built plans and specifications and well completion data within 30 days after the date of such requests, or by any other deadline specified in writing.

- d. Within 195 days after the effective date of this Agreed Order, Respondent shall submit written certification, in accordance with Ordering Provision No. 2.e., below, to demonstrate compliance with Ordering Provisions Nos. 2.c.i. and 2.c.ii.
- e. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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 fine and imprisonment for knowing violations."

Respondent shall submit the written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and:

Arnaldo Lanese, Water Section Manager
Texas Commission on Environmental Quality
Laredo Regional Office
707 East Calton Road, Suite 304
Laredo, Texas 78041-3887

and:

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

3. All relief not expressly granted in this Agreed Order is denied.
4. The provisions of this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed in Ordering Provision No. 2.e., above.
6. This Agreed Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the Office of the Attorney General of the State of Texas ("OAG") to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within TCEQ's jurisdiction, or of a rule adopted or an order or permit issued by TCEQ under such a statute.
7. The Executive Director may, without further notice or hearing, refer this matter to the OAG for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
8. 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.
9. 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.
10. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand delivery of this Agreed Order to Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

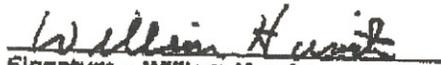

Date

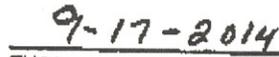
I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of Brush Country Development Corporation, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this Agreed Order and/or failure to timely pay the penalty amount may result in:

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

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


Signature - William Humiston, President
BRUSH COUNTRY DEVELOPMENT CORPORATION


Date