

EXECUTIVE SUMMARY - ENFORCEMENT  
DOCKET NO.: 2005-1582-IHW-E TCEQ ID: RN104674262 CASE NO.: 26818  
RESPONDENT NAME: JOE BOY JOHNSON

2007 SEP 27 AM 11:04

CHIEF CLERKS OFFICE

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 1.5 miles north of the intersection of County Road 128 and County Road 148, near Melvin, McCulloch County

**TYPE OF OPERATION:** Unauthorized industrial hazardous waste disposal site

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There has been one complaint. There is no record of additional pending enforcement actions regarding this person.

**INTERESTED PARTIES:** One complaint has been received but the complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on October 22, 2007. No comments were received.

**CONTACTS AND MAILING LIST:**

TCEQ Attorney: Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  
 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873  
 TCEQ Enforcement Coordinator: Mr. Michael Meyer, Waste Enforcement Division, MC 128, (512) 239-4492  
 TCEQ Regional Contact: Mr. Mark Newman, San Angelo Regional Office, MC R-8, (325) 655-9479  
 Respondent: Mr. Joe Johnson, Route 1 Box 34, Brady, Texas 76825  
 Respondent's Attorney: Not represented by counsel on this enforcement matter.

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

2007 OCT 15 PM 4:33

CHIEF CLERKS OFFICE

SAFETY  
 MOBILE  
 JAMES  
 YILAUD

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b>            May 25, 2005</p> <p><b>Dates of Investigation Relating to this Case:</b>            June 3, 2005</p> <p><b>Date of NOE Relating to this Case:</b>            July 15, 2005 (NOE)</p> <p><b>Background Facts:</b></p> <p>The BDPRP was filed on March 13, 2006. The Respondent filed an answer on March 17, 2006. The case was referred to SOAH on May 31, 2006. A contested case hearing was held at SOAH on October 12, 2006. A PFD was issued on December 1, 2006. The PFD was continued from the March 28, 2007, agenda to allow Respondent and the Executive Director to enter into an agreed order. Settlement was achieved and a signed agreed order was received on July 30, 2007. The Executive Director has requested that the PFD and the Agreed Order be set for consideration on the same Commission agenda.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>IHW:</b></p> <p>Failed to properly dispose of hazardous waste in an authorized manner protective of human health and the environment [30 TEX. ADMIN. CODE §§ 335.2(a), 335.4 and 40 CFR § 270.1].</p>	<p><b>Total Assessed:</b> \$2,500</p> <p><b>Total Paid/Due to General Revenue:</b>            The Respondent has paid \$100 of the administrative penalty. The remaining amount of \$2,400 will be paid in 24 installments of \$100 each.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 15 days, begin an on-site containment approach that will impose a physical barrier to isolate the contaminated material and prevent exposure by:           <ol style="list-style-type: none"> <li>a. Consolidating contaminated soil at the site and cap with a caliche barrier of no less than 12 inches;</li> <li>b. Compacting caliche barrier and cover with an additional layer of topsoil of no less than four inches; and</li> <li>c. Planting shallow-root vegetation sufficient to cover the capped area.</li> </ol> </li> <li>2. Within 180 days, conduct a survey of the Site and institute a deed restriction preventing future development of the Site to limit exposure of the capped area.</li> <li>3. Within 195, days submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

**DATES** Assigned  PCW  Screening  EPA Due

## RESPONDENT/FACILITY INFORMATION

Respondent   
 Reg. Ent. Ref. No.   
 Facility/Site Region  Major/Minor Source

## CASE INFORMATION

Enf./Case ID No.  No. of Violations   
 Docket No.  Order Type   
 Media Program(s)  Enf. Coordinator   
 Multi-Media  EC's Team   
 Admin. Penalty \$ Limit Minimum  Maximum

## 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  Subtotals 2, 3, & 7

Notes

Culpability   Subtotal 4

Notes

Good Faith Effort to Comply  Subtotal 5

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	<i>(mark with a small x)</i>

Notes

Economic Benefit  Subtotal 6

Total EB Amounts	<input type="text" value="\$432"/>	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	<input type="text" value="\$10,000"/>	

**SUM OF SUBTOTALS 1-7** Final Subtotal

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

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 08-Aug-2005

Docket No. 2005-1582-IHW-E

PCW

Respondent Joe Boy Johnson

Policy Revision 2 (September 2002)

Case ID No. 26818

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN104674262

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Meyer

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	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) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No NOV's or orders issued in the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 0%

Screening Date 08-Aug-2005

Docket No. 2005-1582-IHW-E

PCW

Respondent Joe Boy Johnson

Policy Revision ? (September 2002)

Case ID No. 26818

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN104674262

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Meyer

Violation Number

Primary Rule Cite(s) 30 Tex. Admin. Code § 335.2(a) and 335.4

Secondary Rule Cite(s) 40 Code of Federal Regulations ("CFR") § 270.1

Violation Description Failed to properly dispose of hazardous waste in an authorized manner protective of human health and the environment, as documented during an investigation conducted on June 3, 2005. Specifically, soil samples collected from areas around an abandoned scrap metal site indicated total lead levels as high as 71,800 milligrams per kilogram ("mg/kg"). Toxicity Characteristic Leachate Procedure ("TCLP") levels for lead were measured at 716 milligrams per liter ("mg/L"), which exceeds the regulatory limit for hazardous waste of 5.0 mg/L.

Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes

Human health and the environment has been exposed to significant amounts of contaminants which do not exceed levels protective of human health or environmental receptors. Although the TCLP samples measured levels above the level determined to be hazardous (5 mg/L) the area of contamination is not located near a residential or commercial area and there is no documented groundwater contamination in this area.

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	X
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

One quarterly event is recommended from the 6/3/2005 investigation to the date of screening.

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 Joe Boy Johnson  
 Case ID No. 26818  
 Reg. Ent. Reference No. RN104674262  
 Media [Statute] Industrial and Hazardous Waste  
 Violation No. 1

Percent Interest 5.0  
 Years of Depreciation 15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$10,000	03-Jun-2005	14-Jan-2006	0.6	\$21	\$411	\$432
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost of performing an Affected Property Assessment Report (APAR) to determine the extent of contamination. This does not include the cost of remediation as this is to be determined by the APAR.

Item	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)
Disposal	0.0 \$0 \$0 \$0
Personnel	0.0 \$0 \$0 \$0
Inspection/Reporting/Sampling	0.0 \$0 \$0 \$0
Supplies/equipment	0.0 \$0 \$0 \$0
Financial Assurance [2]	0.0 \$0 \$0 \$0
ONE-TIME avoided costs [3]	0.0 \$0 \$0 \$0
Other (as needed)	0.0 \$0 \$0 \$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$10,000**

TOTAL **\$432**

# Compliance History

Customer/Respondent/Owner-Operator:	CN602866246 JOHNSON, JOE BOY	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN104674262 JOE BOY JOHNSON WIRE BURN SITE	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
Number(s):	INDUSTRIAL AND HAZARDOUS WASTE GENERATION INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID ID NUMBER	TXR000065177 F1852
Location:	1.5 miles N of the Intersection of County Rd 128 and County Rd 148		Rating Date: 9/1/2005 Repeat Violator: NO
CEQ Region:	REGION 08 - SAN ANGELO		
Date Compliance History Prepared:	September 23, 2005		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	September 23, 2000 to September 23, 2005		
CEQ Staff Member to Contact for Additional Information Regarding this Compliance History:	Name: <u>Michael Meyer</u> Phone: <u>(512) 239-4492</u>		

## Site Compliance History Components

- 1. Has the site been in existence and/or operation for the full five year compliance period? Yes
- 2. Has there been a (known) change in ownership of the site during the compliance period? No
- 3. If Yes, who is the current owner? N/A
- 4. If Yes, who was/were the prior owner(s)? N/A
- 5. When did the change(s) in ownership occur? N/A

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government. N/A
  - B. Any criminal convictions of the state of Texas and the federal government. N/A
  - C. Chronic excessive emissions events. N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.) N/A
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.) N/A
  - 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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

2007 SEP 27 AM 11: 04

CHIEF CLERKS OFFICE

CHIEF CLERKS OFFICE

2007 OCT 15 PM 4: 34

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING JOE BOY JOHNSON RN104674262

§ § § § § § § §

BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2005-1582-IHW-E

I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Joe Boy Johnson ("Mr. Johnson") under the authority of the TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Johnson appear before the Commission and together stipulate that:

- 1. Mr. Johnson owns property located approximately 1.5 miles north of the intersection of County Road 128 and County Road 148, near Melvin, McCulloch County, Texas (the "Site").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361.
3. The Commission and Mr. Johnson agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Johnson is subject to the Commission's jurisdiction.
4. Mr. Johnson received notice of the violations alleged in Section II ("Allegations") on or about July 20, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Johnson of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of two thousand five hundred dollars (\$2,500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Johnson has paid one hundred dollars (\$100.00) of the administrative

Joe Boy Johnson

DOCKET NO. 2005-1582

Page 2

penalty. The remaining amount of two thousand four hundred dollars (\$2,400.00) shall be payable in twenty-four monthly payments of one hundred dollars (\$100.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Mr. Johnson fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the acceleration of any remaining balance constitutes the failure by Mr. Johnson to timely and satisfactorily comply with all the terms of this Agreed Order and the Executive Director may demand payment of any deferred penalty amount.

7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Mr. Johnson have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Mr. Johnson has not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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.

## II. ALLEGATIONS

Mr. Johnson is alleged to have violated 30 TEX. ADMIN. CODE § 335.2(a), 335.4 and 40 CODE OF FEDERAL REGULATIONS ("CFR") § 270.1, by failing to properly dispose of hazardous waste in an authorized manner protective of human health and the environment, as documented in an inspection conducted on June 3, 2005. Specifically, soils samples collected from locations around an abandoned scrap metal site indicated total lead levels as high as 71,800 milligrams per kilogram ("mg/kg"). Toxicity Characteristic Leachate Procedure levels for lead were measured at 716 milligrams per liter ("mg/L"), which exceeds the regulatory limit for hazardous waste of 5.0 mg/L.

### III. DENIALS

Mr. Johnson generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Johnson pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Johnson's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Joe Boy Johnson, Docket No. 2005-1582-IHW-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. Mr. Johnson shall undertake the following technical requirements:
  - a. Within 15 days after the effective date of this Agreed Order, Mr. Johnson shall begin an on-site containment approach that will impose a physical barrier to isolate the contaminated material and prevent exposure by:
    - i. Consolidating contaminated soil at the site and cap with a caliche barrier of no less than 12 inches;
    - ii. Compacting caliche barrier and cover with an additional layer of topsoil of no less than four inches; and
    - iii. Planting shallow-root vegetation sufficient to cover the capped area.
  - b. Within 180 days after the effective date of this Agreed Order, Mr. Johnson shall conduct a survey of the Site and institute a deed restriction preventing future development of the Site to limit exposure of the capped area.
  - c. Within 195 days after the effective date of this Agreed Order, Mr. Johnson shall submit written certification as described below, and include detailed supporting documentation

including photographs, receipts or other records to demonstrate compliance with Ordering Provision Nos. 2.a through 2.b.

The certifications required above shall be notarized by a State of Texas Notary Public and include the following certification language.

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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”

The certification shall be submitted to:

Ata ur Rahman, Manager  
Corrective Actions Section  
Remediation Division, MC 127  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, TX 78711-3087

with a copy to:

Work Leader  
Team 7, Section IV  
Enforcement Division, MC 128  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

and a copy to:

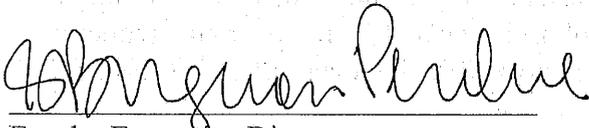
Mark Newman  
Waste Section Manager  
San Angelo Regional Office  
Texas Commission on Environmental Quality  
622 South Oakes, Suite K  
San Angelo, Texas 76903-7013

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Johnson. Mr. Johnson is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If Mr. Johnson fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Johnson's failure to comply is not a violation of this Agreed Order. Mr. Johnson shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Johnson shall notify the Executive Director within seven days after Mr. Johnson becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
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 Mr. Johnson shall be made in writing to the Executive Director. Extensions are not effective until Mr. Johnson receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Johnson 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.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Mr. Johnson, or three days after the date on which the Commission mails notice of the Order to Mr. Johnson, 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

9/12/07

Date

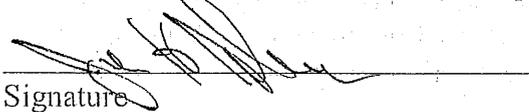
I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my

failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- 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 against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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

  
Signature

7-30-07  
Date

JOE H. JOHNSON  
Name (Printed or typed)  
Authorized Representative of  
Joe Boy Johnson

\_\_\_\_\_  
Title