

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NUMBER: 2006-0470-OSI-E TCEQ ID NO: RN103390274 ENF ID: 29357
RESPONDENT NAME: JIM B. CLEMONS

ORDER TYPE:

<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> SHUTDOWN ORDER	<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:

<input type="checkbox"/> AGRICULTURE	<input type="checkbox"/> AIR	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE	<input type="checkbox"/> MUNICIPAL SOLID WASTE
<input checked="" type="checkbox"/> OCCUPATIONAL CERTIFICATION	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> RADIOACTIVE WASTE
<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL	<input type="checkbox"/> USED OIL
<input type="checkbox"/> USED OIL FILTER	<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> DRY CLEANER REGISTRATION	

SITE WHERE VIOLATION(S) OCCURRED: 302 North Scruggs in Corsicana, Navarro County; 213 South Trinity Avenue in Emhouse, Navarro County

TYPE OF OPERATION: on-site sewage facility installer

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: This Facility was investigated on March 1, 2006, as a result of a complaint received by the TCEQ DFW Regional Office. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: There has been a complaint, but the complainant has not indicated a desire to protest this action or to 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 March 23, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Shawn A. Slack, Litigation Division, MC 175, (512) 239-0063; Ms. Jennifer Cook, Litigation Division, MC 175 (512) 239-1873

TCEQ Enforcement Coordinator: Mr. Brent Hurta, Enforcement Division, MC 169, (512) 239-6589

TCEQ Regional Contact: Mr. Sid Slocum, DFW Regional Office, MC R-4, (817) 588-5901

Respondent: Mr. Jim B. Clemons, 302 N. Scruggs Road, Corsicana, Texas 75109

Respondent's Attorney: Not represented by counsel.

**RESPONDENT'S NAME: JIM B. CLEMONS
DOCKET NO.: 2006-0470-OSI-E**

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: February 14, 2006</p> <p>Date(s) of Investigation(s) Relating to this Case: March 1, 2006</p> <p>Date(s) of NOV(s)/NOE(s) Relating to this Case: April 27, 2006 (NOE)</p> <p>Background Facts: An EDRP was filed on October 26, 2006. The Respondent received notice of the EDRP on or about October 31, 2006. The Respondent has not filed an answer or requested a hearing.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>AIR:</p> <p>1. Failed to obtain a license prior to completing installation of an on-site sewage facility [30 TEX. ADMIN. CODE § 285.61(1), TEX. WATER CODE §37.003, and TEX. HEALTH & SAFETY CODE § 366.071(a)].</p> <p>2. Failed to meet the minimum criteria for an on-site sewage facility [30 TEX. ADMIN. CODE § 285.61(6) and TEX. HEALTH & SAFETY CODE § 366.004].</p>	<p>Total Assessed: \$1,125</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>Total Due to General Revenue: \$1,125</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this proposed Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input type="checkbox"/> Avg. <input type="checkbox"/> Poor <input checked="" type="checkbox"/> N/A</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input type="checkbox"/> Avg. <input type="checkbox"/> Poor <input checked="" type="checkbox"/> N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provision(s)</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1. Immediately, cease performing services, constructing, installing, altering, or repairing OSSFs until properly certified.</p> <p>2. Within 15 days, submit written certification notarized by a State of Texas Notary Public and include detailed supporting documentation including photographs, receipts, and or other records to demonstrate compliance with these Ordering Provisions.</p>

Penalty Calculation Worksheet (PCW)
 Policy Revision 2 (September 2002) PCW Revision, May 19, 2005

DATES	Assigned	01-May-2006	Screening	11-May-2006	EPA Due	
	PCW	25-Jul-2006				

RESPONDENT/FACILITY INFORMATION	
Respondent	Jim B. Clemons
Reg. Ent. Ref. No.	RN103390274
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	29357	No. of Violations	2
Docket No.	2006-0470-OSI-E	Order Type	1660
Media Program(s)	On-Site Sewage Disposal	Enf. Coordinator	Brent Hurta
Multi-Media		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$2,500

Penalty Calculation Section													
TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1 \$1,125												
ADJUSTMENTS (+/-) TO SUBTOTAL 1													
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>													
Compliance History	0% Enhancement Subtotal 2, 3, & 7 \$0												
Notes	No enhancement due to no previous compliance history.												
Culpability	No <input checked="" type="checkbox"/> 0% Enhancement Subtotal 4 \$0												
Notes	Respondent did not meet culpability criteria.												
Good Faith Effort to Comply	0% Reduction Subtotal 5 \$0												
<table border="1" style="width: 100%;"> <tr> <td></td> <td style="text-align: center;">Before NOV</td> <td style="text-align: center;">NOV to EDRP/Settlement Offer</td> </tr> <tr> <td>Extraordinary</td> <td></td> <td></td> </tr> <tr> <td>Ordinary</td> <td></td> <td></td> </tr> <tr> <td>N/A</td> <td style="text-align: center;">x</td> <td style="text-align: center;">(mark with a small x)</td> </tr> </table>			Before NOV	NOV to EDRP/Settlement Offer	Extraordinary			Ordinary			N/A	x	(mark with a small x)
	Before NOV	NOV to EDRP/Settlement Offer											
Extraordinary													
Ordinary													
N/A	x	(mark with a small x)											
Notes	Respondent is not yet in compliance.												
Economic Benefit	0% Enhancement* Subtotal 6 \$0												
<table border="1" style="width: 100%;"> <tr> <td>Total EB Amounts</td> <td>\$840</td> <td rowspan="2" style="text-align: center;"><small>*Capped at the Total EB \$ Amount</small></td> </tr> <tr> <td>Approx. Cost of Compliance</td> <td>\$800</td> </tr> </table>		Total EB Amounts	\$840	<small>*Capped at the Total EB \$ Amount</small>	Approx. Cost of Compliance	\$800							
Total EB Amounts	\$840	<small>*Capped at the Total EB \$ Amount</small>											
Approx. Cost of Compliance	\$800												
SUM OF SUBTOTALS 1-7	Final Subtotal \$1,125												
OTHER FACTORS AS JUSTICE MAY REQUIRE	Adjustment \$0												
<small>Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)</small>													
Notes													
Final Penalty Amount \$1,125													
STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty \$1,125												
DEFERRAL	0% Reduction Adjustment \$0												
<small>Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>													
Notes	Deferral not offered for non-expedited settlement.												
PAYABLE PENALTY	\$1,125												

Screening Date	11-May-2006	Docket No.	2006-0470-OSI-E	PCW
Respondent	Jim B. Clemons			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	29357			<i>PCW Revision May 19, 2005</i>
Reg. Ent. Reference No.	RN103390274			
Media [Statute]	On-Site Sewage Disposal			
Enf. Coordinator	Brent Hurta			

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 (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were</i>	0	0%
	<i>disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)</i>	0	0%
Other	<i>Please Enter Yes or No</i>		
	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)

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 No enhancement due to no previous compliance history.

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

Screening Date	11-May-2006	Docket No.	2006-0470-OSI-E	PCW
Respondent	Jim B. Clemons	Policy Revision 2 (September 2002)		
Case ID No.	29357	PCW Revision May 19, 2005		
Reg. Ent. Reference No.	RN103390274			
Media [Statute]	On-Site Sewage Disposal			
Enf. Coordinator	Brent Hurta			
Violation Number	1			
Primary Rule Cite(s)	30 Tex. Admin. Code § 285.61(6)			
Secondary Rule Cite(s)	Tex. Health & Safety Code § 366.004			
Violation Description	Failure to meet the minimum criteria for an OSSF specified in 30 Tex. Admin. Code Chapter 285, as documented during an investigation conducted on March 1, 2006. Specifically, Mr. Clemons installed a conventional septic system in Class IV soil, resulting in floating septic tanks and improperly disposed wastewater.			
Base Penalty				\$2,500

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

OR	Harm				Percent
	Release	Major	Moderate	Minor	
	Actual				
	Potential		x		10%

>> **Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent

Matrix Notes: Failure to meet the minimum criteria for installation of an on-site sewage disposal system could result in the exposure of a significant amount of pollutants which would not exceed levels protective of human health or environmental receptors.

Adjustment -\$2,250

Base Penalty Subtotal \$250

Violation Events

Number of Violation Events 2

mark only one use a small x	daily	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$500

Two quarterly events are recommended from the March 1, 2006 investigation date to the May 11, 2006 screening date.

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

Estimated EB Amount \$0

Violation Final Penalty Total \$500

This violation Final Assessed Penalty (adjusted for limits) \$500

Economic Benefit Worksheet

Respondent Jim B. Clemons
 Case ID No. 29357
 Reg. Ent. Reference No. RN103390274
 Media [Statute] On-Site Sewage Disposal
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
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

Avoided Costs

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

Included with violation 3 economic benefit.

Approx. Cost of Compliance

TOTAL

Screening Date	11-May-2006	Docket No.	2006-0470-OSI-E	PCW
Respondent	Jim B. Clemons	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	29357	<i>PCW Revision May 19, 2005</i>		
Reg. Ent. Reference No.	RN103390274			
Media [Statute]	On-Site Sewage Disposal			
Enf. Coordinator	Brent Hurta			
Violation Number	<input type="text" value="2"/>			
Primary Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 285.61(1)"/>			
Secondary Rule Cite(s)	<input type="text" value="Tex. Health & Safety Code § 366.071(a) and Tex. Water Code § 37.003"/>			
Violation Description	<input type="text" value="Failure to obtain a license prior to completing installation of an OSSF, as documented during an investigation conducted on March 1, 2006."/>			
Base Penalty				<input type="text" value="\$2,500"/>

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

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

>> **Programmatic Matrix**

		Major	Moderate	Minor	
Falsification		<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text"/>
Matrix Notes <input type="text" value="Installing OSSFs without a license could expose human health to pollutants which would exceed protective levels."/>					

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	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input checked="" type="checkbox"/>

Violation Base Penalty

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$840"/>	Violation Final Penalty Total <input type="text" value="\$625"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$625"/>	

Economic Benefit Worksheet

Respondent: Jim B. Clemons
 Case ID No: 29357
 Reg. Ent. Reference No: RN103390274
 Media [Statute]: On-Site Sewage Disposal
 Violation No: 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
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

Avoided Costs

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]	\$800	12-Jan-2006	11-Dec-2006	1.0	\$40	\$800	\$840
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount required to obtain a valid installer license. Date required is the date of contract to install the on-site sewage system and the final date is estimated date of compliance.

Approx. Cost of Compliance \$800

TOTAL \$840

Compliance History

Customer/Respondent/Owner-Operator: CN601910466 CLEMONS, JIM B Classification: Rating:
Regulated Entity: RN103390274 CLEMONS, JIM B Classification: Site Rating:
ID Number(s):
Location: 302 N SCRUGGS, CORSICANA, NAVARRO COUNTY
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: May 02, 2006
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: May 02, 2001 to May 02, 2006

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Brent Hurta Phone: 512-239-6589

Site Compliance History Components

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 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



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
JIM B. CLEMONS,
RN103390274**

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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2006-0470-OSI-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 37, TEX. HEALTH & SAFETY CODE ch. 366, and the rules of the TCEQ, which requests appropriate relief, including, the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Jim B. Clemons ("Mr. Clemons").

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

FINDINGS OF FACT

1. Mr. Clemons is an unlicensed on-site sewage facility ("OSSF") installer operating at 302 North Scruggs in Corsicana, Navarro County, Texas. Mr. Clemons installed an OSSF at 213 South Trinity Avenue in Emhouse, Navarro County, Texas (the "Site").
2. During an inspection on March 1, 2006, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Mr. Clemons:
 - a. Failed to obtain a license prior to completing installation of an on-site sewage facility.
 - b. Failed to meet the minimum criteria for an on-site sewage facility as specified in 30 TEX. ADMIN. CODE Ch. 285.
3. Mr. Clemons received notice of the violations on or about May 1, 2006.
4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jim B. Clemons" (the "EDPRP") in the TCEQ Chief Clerk's office on October 24, 2006.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



5. By letter dated October 24, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Clemons with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Clemons received notice of the EDPRP.
6. More than 20 days have elapsed since Mr. Clemons received notice of the EDPRP, provided by the Executive Director. Mr. Clemons failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Clemons is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 37, TEX. HEALTH & SAFETY CODE ch. 366, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Clemons failed to obtain a license prior to completing installation of an on-site sewage facility, in violation of 30 TEX. ADMIN. CODE § 285.61(1), TEX. WATER CODE § 37.003, and TEX. HEALTH & SAFETY CODE § 366.071(a).
3. As evidenced by Finding of Fact No. 3.b., Mr. Clemons failed to meet the minimum criteria for an on-site sewage facility as specified in 30 TEX. ADMIN. CODE ch. 285, in violation of 30 TEX. ADMIN. CODE § 285.61(6) and TEX. HEALTH & SAFETY CODE § 366.004.
4. As evidenced by Finding of Fact Nos. 4 and 5, the Executive Director has timely served Mr. Clemons with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 6, Mr. Clemons has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Clemons and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Clemons 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.

7. An administrative penalty in the amount of one thousand one hundred twenty five dollars (\$1,125.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Mr. Clemons is assessed an administrative penalty in the amount of one thousand one hundred twenty five dollars (\$1,125.00) for violations of TEX. WATER CODE ch. 37, TEX. HEALTH & SAFETY CODE ch. 366, and rules of the TCEQ. The payment of this administrative penalty and Mr. Clemons's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Jim B. Clemons; Docket No. 2006-0470-OSI-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. Clemons shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Clemons shall cease performing services, constructing, installing, altering, or repairing OSSFs until properly certified, in accordance with the requirements of 30 TEX. ADMIN. CODE ch. 285, SubChapter F.
 - b. Within 15 days after the effective date of this Order, submit written certification of compliance with Ordering Provision 2.a. The certification shall, include detailed supporting documentation including receipts, and/or other records to demonstrate

compliance, 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 fine 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:

Sid Slocum, Water Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Clemons. Mr. Clemons is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site's operations referenced in this Order.
5. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Clemons shall be made in writing to the Executive Director. Extensions are not effective until Mr. Clemons receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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 Mr. Clemons

if the Executive Director determines that Mr. Clemons has not complied with one or more of the terms or conditions in this Order.

7. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
8. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Jim B. Clemons
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF SHAWN A. SLACK

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Shawn A. Slack. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jim B. Clemons” (the “EDPRP”) with the Office of the Chief Clerk on October 24, 2006.

I sent the EDPRP to Mr. Clemons at his last known address on October 24, 2006, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since Mr. Clemons received notice of the EDPRP. Mr. Clemons failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



Shawn A. Slack, Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Shawn A. Slack, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 11 day of December, 2006.

Notary Stamp 
