

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2005-0919-MSW-E TCEQ ID NO.: RN104523063 CASE NO.: 25561
RESPONDENT NAME: MICHAEL CONLIN

ORDER TYPE:

<input checked="" 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 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 checked="" type="checkbox"/> MUNICIPAL SOLID WASTE
<input 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 checked="" type="checkbox"/> USED OIL
<input type="checkbox"/> USED OIL FILTER	<input type="checkbox"/> WATER QUALITY		

SITE WHERE VIOLATION(S) OCCURRED: 6820 Kiwanis Club Rd., Silsbee, Hardin County

TYPE OF OPERATION: Residential property

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no previous complaints. There is no record of additional pending enforcement actions regarding this person.

INTERESTED PARTIES: 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 February 26, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320; Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
TCEQ Enforcement Coordinator: Mr. Thomas Greimel, Enforcement Division, MC 128, (512) 239-5690
TCEQ Regional Contact: Mr. Keith Anderson, Beaumont Regional Office, MC R-10, (409) 898-3838
Respondent: Mr. Michael Conlin, Owner, 6820 Kiwanis Club Road, Silsbee, Texas 77656
Respondent's Attorney: Not represented by counsel.

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2007 APR 17 PM 4:20
CHIEF CLERK'S OFFICE

**RESPONDENT'S NAME: MICHAEL CONLIN
DOCKET NO.: 2005-0919-MSW-E**

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: ___ Complaint <input checked="" type="checkbox"/> Routine ___ Enforcement Follow-up ___ Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date(s) of Investigation(s) Relating to this Case: February 16, 2005</p> <p>Dates of NOEs Relating to this Case: May 2, 2005 (NOE); August 22, 2005 (NOE)</p> <p>Background Facts: The Respondent signed an Agreed Order on July 25, 2006. A letter of explanation was submitted by the Respondent regarding the impact of Hurricane Rita and disrupted communications and property damage during the Enforcement expedited settlement period. In response, the Enforcement Division allowed a 20% adjustment of the administrative penalty as "other factors as justice may require." The expedited settlement period was August 22 to October 24, 2005. Hurricane Rita hit the Texas-Louisiana border on September 24, 2005.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>MSW</p> <p>Failed to prevent the unauthorized discharge of used oil to soil at the Site [30 TEX. ADMIN. CODE § 324.4(2)(B), TEX. HEALTH & SAFETY CODE § 371.041 and 40 CFR § 279.12].</p>	<p>Total Assessed: \$1,000</p> <p>Total Deferred: ___ Expedited Settlement ___ Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,000</p> <p>The Respondent has paid \$1,000 of the administrative penalty in full.</p> <p>Site Compliance History Classification: ___ High <input checked="" type="checkbox"/> Avg. ___ Poor</p> <p>Person Compliance History Classification: ___ High <input checked="" type="checkbox"/> Avg. ___ Poor</p> <p>Major Source: ___ Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Action Taken:</p> <p>The Executive Director recognizes that the Respondent had the contaminated soil properly removed to an authorized municipal solid waste facility on or about June 8, 2006.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 03, 2005

DATES	Assigned	09-May-2005	Screening	20-May-2005	Priority Due	08-Jul-2005	EPA Due	
	PCW	07-Jul-2006						

RESPONDENT/FACILITY INFORMATION	
Respondent	Michael Conlin
Reg. Ent. Ref. No.	RN104523063
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	25561	No. of Violations	1
Docket No.	2005-0919-MSW-E	Order Type	1660
Media Program(s)	Used Oil	Enf. Coordinator	Thomas Greimel
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1 \$1,250

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0% Enhancement Subtotals 2, 3, & 7 \$0

Notes: The Respondent has no previous NOVs, enforcement orders, or judgments within the past five years.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes: Does not meet the culpability criteria.

Good Faith Effort to Comply 0% Reduction Subtotal 5 \$0

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

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

Economic Benefit 0% Enhancement* Subtotal 6 \$0

Total EB Amounts	\$131	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,000	

SUM OF SUBTOTALS 1-7 Final Subtotal \$1,250

OTHER FACTORS AS JUSTICE MAY REQUIRE 20% Reduction Adjustment -\$250

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

Notes: Penalty reduction offered due to disruption of communications and property damage caused by Hurricane Rita during the expedited settlement period.

Final Penalty Amount \$1,000

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$1,000

DEFERRAL 0% Reduction Adjustment \$0

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: This is not an expedited case.

PAYABLE PENALTY \$1,000

Screening Date 20-May-2005 **Docket No.** 2005-0919-MSW-E **PCW**
Respondent Michael Conlin *Policy Revision 2 (September 2002)*
Case ID No. 25561 *PCW Revision May 03, 2005*
Reg. Ent. Reference No. RN104523063
Media [Statute] Used Oil
Enf. Coordinator Thomas Greimel

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%
	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%
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%

Please Enter Yes or No

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 The Respondent has no previous NOVs, enforcement orders, or judgments within the past five years.

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

Screening Date	20-May-2005	Docket No.	2005-0919-MSW-E	PCW
Respondent	Michael Conlin	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	25561	<i>PCW Revision May 03, 2005</i>		
Reg. Ent. Reference No.	RN104523063			
Media [Statute]	Used Oil			
Enf. Coordinator	Thomas Greimel			
Violation Number	1			
Primary Rule Cite(s)	30 Tex. Admin. Code § 324.4(2)(B)			
Secondary Rule Cite(s)	Tex. Health & Safety Code § 371.041 and 40 Code of Federal Regulations § 279.12			
Violation Description	Unauthorized discharge of used oil to soil, as documented during an investigation conducted on February 16, 2005. Specifically, analytical results of soil samples contaminated with petroleum substances indicate Total Petroleum Hydrocarbon concentrations of 15,770, 10,073 and 24,730 ppm.			
Base Penalty	\$2,500			

>> **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 or the environment has been exposed to a significant amount of pollutants which exceed do not levels that are protective of human health or environmental receptors.

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	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

Two quarterly penalty events are recommended.

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 Michael Conlin
 Case ID No. 25561
 Reg. Ent. Reference No. RN104523063
 Media [Statute] Used Oil
 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				0.0	\$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	\$2,000	16-Feb-2005	08-Jun-2006	1.3	\$131	n/a	\$131
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimate cost to assess, remediate, and dispose of contaminated soil. Date Required is the investigation date and the Final Date is the date of compliance.

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

Approx. Cost of Compliance **\$2,000**

TOTAL \$131

Compliance History

Customer/Respondent/Owner-Operator:	CN602782237 CONLIN, MICHAEL	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN104523063 6820 KAWANIS CLUB RD	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED	ID NUMBER	455100047
Location:	6820 KIWANIS CLUB RD, SILSBEE, TX, 77656	Rating Date: 9/1/2004	Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	July 26, 2005		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	July 26, 2000 to July 26, 2005		

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

Name: Thomas Greimel Phone: (512) 239-5690

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? | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)? | <u>N/A</u> |
| 5. When did the change(s) in ownership occur? | <u>N/A</u> |

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
AGAINST MICHAEL CONLIN;
RN104523063**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2005-0919-MSW-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Michael Conlin ("Mr. Conlin") under the authority of TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 371, and 40 CODE OF FEDERAL REGULATIONS ("C.F.R.") ch. 279. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Conlin, appear before the Commission and together stipulate that:

1. Mr. Conlin owns a residential property located at 6820 Kiwanis Club Road, Silsbee, Hardin County, Texas (the "Site"). The Site involves the management of used oil as defined in TEX. HEALTH & SAFETY CODE ch. 371.
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. 371, 40 C.F.R. ch. 279 and TCEQ rules.
3. The Commission and Mr. Conlin agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Conlin is subject to the Commission's jurisdiction.
4. Mr. Conlin received notice of the violations alleged in Section II ("Allegations") on or about May 7, 2005.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Conlin of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of one thousand dollars (\$1,000.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Conlin has paid one thousand dollars (\$1,000.00) of the administrative penalty.
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. Conlin have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Mr. Conlin had the contaminated soil properly removed to an authorized municipal solid waste facility on or about June 8, 2006.
10. 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. Conlin has not complied with one or more of the terms or conditions in this Agreed Order.
11. 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.
12. 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. Conlin is alleged to have violated 30 TEX. ADMIN. CODE § 324.4(2)(B), TEX. HEALTH & SAFETY CODE 371.041 and 40 C.F.R. § 279.12 by failing to prevent the unauthorized discharge of used oil to soil at the Site, as documented on during an inspection conducted on February 16, 2005 by a TCEQ Beaumont Regional Office Investigator. Specifically, analytical results of soil samples contaminated with petroleum substances indicate Total Petroleum Hydrocarbon concentrations of 15,770, 10,073 and 24,730 parts per million.

III. DENIALS

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

IV. ORDER

1. It is, therefore, ordered by the TCEQ that Mr. Conlin pay an administrative penalty as set forth in Section I, Paragraph six above. The payment of this administrative penalty and Mr. Conlin'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 considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Michael Conlin, Docket No. 2005-0919-MSW-E" to:

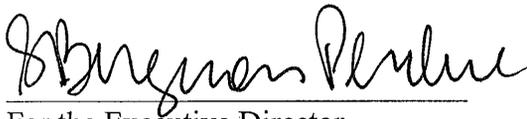
Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The provisions of this Agreed Order shall apply to and be binding upon Mr. Conlin. Mr. Conlin 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.
3. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Conlin 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.
4. 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.
5. Under 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 the Order to Mr. Conlin, or three days after the date on which the Commission mails notice of the Order to Mr. Conlin, 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

2/19/07

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 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

1/2/07

Date



Name (Printed or typed)
Michael Conlin

Individual

Title