EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-2242-OSI-E **TCEQ ID:** RN105081517 **CASE NO.:** 31972

RESPONDENT NAME: David Gonzales

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
X WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 3479 and 3481 Farm-to-Market Road 1058, Deaf Smith County

TYPE OF OPERATION: On-Site sewage facility installation

SMALL BUSINESS: X **Yes** ___ **No**

OTHER SIGNIFICANT MATTERS: A complaint was received on October 5, 2006, alleging that the Respondent altered a pre 1989 on-site sewage facility without first obtaining a permit. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.

COMMENTS RECEIVED: The *Texas Register* comment period expired on April 2, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None
TCEQ Enforcement Coordinator: Ms. Pamela Campbell, Enforcement Division, Enforcement Section I, MC 169, (512) 239-4493; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896
Respondent: Mr. David Gonzales, 114 Lake Street, Hereford, Texas 79045
Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: _X_ Complaint __ Routine __ Enforcement Follow-up __ Records Review **Date of Complaints Relating to this Case:** October 5, 2006 **Date of Investigation Relating to this Case:** October 9, 2006 **Date of NOE Relating to this Case:** November 8, 2006 (NOE) **Background Facts:** This was a complaint investigation. One violation was documented. **WATER** Failed to obtain documentation that the owners or owners' agent had acquired an Authorization to Construct from the TCEQ prior to altering an on-site sewage facility ("OSSF"). Specifically, the respondent added additional capacity to the OSSF drainfields at 3479 and 3481 Farm-to-Market Road 1058 in Deaf Smith County, Texas before Authorizations to Construct were issued [30 TEX. ADMIN. CODE § 285.61(4) and TEX. HEALTH & SAFETY CODE § 366.051(c)].	**Total Assessed:** $500 **Total Deferred:** $100 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $400 **Site Compliance History Classification** __ **High** __ **Average** __ **Poor** **Person Compliance History Classification** __ **High** __ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** The Order will require the Respondent to: a. Immediately upon the effective date of this Agreed Order, cease performing services, constructing, installing, altering, or repairing OSSFs until proper authorization is acquired; and b. Within 15 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision a.

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision December 8, 2006*

TCEQ

DATES					
Assigned	13-Nov-2006				
PCW	5-Jan-2007	Screening	12-Dec-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION			
Respondent	David Gonzales		
Reg. Ent. Ref. No.	RN105081517		
Facility/Site Region	1-Amarillo	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	31972	No. of Violations	1
Docket No.	2006-2242-OSI-E	Order Type	1660
Media Program(s)	On-Site Sewage Disposal	Enf. Coordinator	Pamela Campbell
Multi-Media		EC's Team	EnforcementTeam 1
Admin. Penalty $ Limit Minimum	$0	Maximum	$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $500

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: No enhancement due to no previous compliance history.

Culpability — No — 0% Enhancement — *Subtotal 4* $0

Notes: Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 0% Reduction — *Subtotal 5* $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.

0% Enhancement* — *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$443
Approx. Cost of Compliance	$420

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $500

OTHER FACTORS AS JUSTICE MAY REQUIRE — *Adjustment* $0

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

Notes:

Final Penalty Amount $500

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $500

DEFERRAL — 20% Reduction — *Adjustment* -$100

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $400

Screening Date	12-Dec-2006	Docket No.	2006-2242-OSI-E
Respondent	David Gonzales		
Case ID No.	31972		
Reg. Ent. Reference No.	RN105081517		
Media [Statute]	On-Site Sewage Disposal		
Enf. Coordinator	Pamela Campbell		

PCW

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

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 submitted*)	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%

		Please Enter Yes or No	
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)

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	12-Dec-2006	**Docket No.** 2006-2242-OSI-E	**PCW**
Respondent	David Gonzales		*Policy Revision 2 (September 2002)*
Case ID No.	31972		*PCW Revision December 8, 2006*
Reg. Ent. Reference No.	RN105081517		
Media [Statute]	On-Site Sewage Disposal		
Enf. Coordinator	Pamela Campbell		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 285.61(4) and Tex. Health & Safety Code § 366.051(c)

Violation Description Failed to obtain documentation that the owners, or owners' agent had acquired Authorization to Construct from the TCEQ prior to altering an OSSF. Specifically, the respondent added additional capacity to OSSF drainfields at 3479 and 3481 Farm-to-Market Road 1058 in Deaf Smith County, Texas, as documented during an investigation on October 9, 2006.

Base Penalty $2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $2,250

$250

Violation Events

Number of Violation Events: 2

59 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $500

Two single events are recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $443

Statutory Limit Test

Violation Final Penalty Total $500

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

Economic Benefit Worksheet

Respondent David Gonzales
Case ID No. 31972
Reg. Ent. Reference No. RN105081517
Media On-Site Sewage Disposal
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	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				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)	$420	9-Oct-2006	7-Dec-2006	1.1	$23	$420	$443
Notes for AVOIDED costs	The avoided cost includes the amount required to obtain an Authorization to Construct before beginning alterations on an OSSF, calculated from the investigation date to the date the permits were mailed to the residence owners.						

Approx. Cost of Compliance $420

TOTAL $443

Compliance History

Customer/Respondent/Owner-Operator:	CN603106980	GONZALES, DAVID	Classification:	Rating:
Regulated Entity:	RN105081517	DAVID GONZALES	Classification:	Site Rating:
ID Number(s):	ON SITE SEWAGE INSTALLER REGISTRATION NO. 2816			
Location:	114 LAKE STREET, HEREFORD, TX, 79045			
TCEQ Region:	REGION 01 - AMARILLO			
Date Compliance History Prepared:	December 06, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	December 06, 2001 to December 06, 2006			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Pamela Campbell Phone: 512 239-4493

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

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
DAVID GONZALES	§	
RN105081517	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2006-2242-OSI-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 David Gonzales ("Mr. Gonzales") under the authority of TEX. HEALTH & SAFETY CODE ch. 366 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and Mr. Gonzales appear before the Commission and together stipulate that:

1. Mr. Gonzales owns and operates an On-Site Sewage Facility ("OSSF") installing business located at 114 Lake Street, Hereford, Deaf Smith County, Texas. Mr. Gonzales altered OSSF systems on properties located at 3479 and 3481 Farm-to-Market Road 1058 in Deaf Smith County, Texas (the "Sites").

2. The TCEQ has general authority concerning the location, design, construction, installation, and proper functioning of an OSSF pursuant to TEX. HEALTH & SAFETY CODE ch. 366.

3. The Commission and Mr. Gonzales agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Gonzales is subject to the Commission's jurisdiction.

4. Mr. Gonzales received notice of the violations alleged in Section II ("Allegations") on or about November 13, 2006.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Gonzales of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Five Hundred Dollars ($500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Gonzales

has paid Four Hundred Dollars ($400) of the administrative penalty and One Hundred Dollars ($100) is deferred contingent upon Mr. Gonzales' timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Mr. Gonzales fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Mr. Gonzales to pay all or part of the deferred 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. Gonzales 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. Gonzales 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

As installer at the Sites, Mr. Gonzales is alleged to have failed to obtain documentation that the owners or owners' agent had acquired an Authorization to Construct from the TCEQ prior to altering an OSSF, in violation of 30 TEX. ADMIN. CODE § 285.61(4) and TEX. HEALTH & SAFETY CODE § 366.051(c). Specifically, the respondent added additional capacity to the OSSF drainfields at 3479 and 3481 Farm-to-Market Road 1058 in Deaf Smith County, Texas before Authorizations to Construct were issued.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Gonzales pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Gonzales' 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: David Gonzales, Docket No. 2006-2242-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. It is further ordered that Mr. Gonzales shall undertake the following technical requirements:

   a. Immediately upon the effective date of this Agreed Order, cease performing services, constructing, installing, altering, or repairing OSSFs until proper authorization is acquired, in accordance with the requirements of 30 TEX. ADMIN. CODE ch. 285; and

   b. Within 15 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

      The information 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:

      Manager, Water Section
      Amarillo Regional Office
      3918 Canyon Drive
      Amarillo, Texas 79109-4933

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. Gonzales.

4. If Mr. Gonzales 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. Gonzales' failure to comply is not a violation of this Agreed Order. Mr. Gonzales shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Gonzales shall notify the Executive Director within seven days after Mr. Gonzales 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. Gonzales shall be made in writing to the Executive Director. Extensions are not effective until Mr. Gonzales 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. Gonzales 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. Gonzales, or three days after the date on which the Commission mails notice of the Order to Mr. Gonzales, 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

5/11/07
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

1-22-07
Date

David Gonzales
Name (Printed or typed)
Authorized Representative of
David Gonzales

Owner
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.