

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0266-PST-E TCEQ ID: RN101655462 CASE NO.: 32766
RESPONDENT NAME: SAM W. MCWHORTER

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 type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" 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
<p>SITE WHERE VIOLATION(S) OCCURRED: 1908 West Broadway, Van Horn, Culberson County</p> <p>TYPE OF OPERATION: Former convenience store with retail sales of gasoline</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on December 17, 2007. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Anna Cox, Litigation Division, MC 175, (512) 239-0974 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. Thomas Greimel, Waste Enforcement Division, MC 128, (512) 239-5960 TCEQ Regional Contact: Mr. Terry McMillan, El Paso Regional Office, MC R-6, (915) 834-4953 Respondent: Mr. Sam W. McWhorter, Owner, 2411 Socorro Road, Carlsbad, New Mexico 88220 Respondent's Attorney: Mr. Ori White, Ori T. White & Associates, P.C., P.O. Box 160, Ft. Stockton, Texas 79735</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigations Relating to this Case: June 21, 2006 and February 2, 2007</p> <p>Dates of NOV/NOEs Relating to this Case: November 11, 2006 (NOV) and February 9, 2007 (NOE)</p> <p>Background Facts:</p> <p>The EDPRP was filed on July 6, 2007. The Respondent filed an answer on August 2, 2007. An Agreed Order was signed and received on September 17, 2007.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>PST:</p> <p>Failed to permanently remove, from service no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements as documented on February 2, 2007 [30 TEX. ADMIN. CODE § 334.47(a)(2)].</p>	<p>Total Assessed: \$7,875</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid/Due to General Revenue: \$525/\$7,350</p> <p>The Respondent has paid \$525 of the administrative penalty. The remaining amount of \$7,350 of the administrative penalty shall be payable in 35 monthly payments of \$210 each.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 30 days, shall permanently remove the UST system from service. 2. Within 45 days shall submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

TCEQ

DATES	Assigned	12-Feb-2007	Screening	22-Feb-2007	EPA Due	
	PCW	24-May-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	Sam W. McWhorter
Reg. Ent. Ref. No.	RN101655462
Facility/Site Region	6-El Paso
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	32766	No. of Violations	1	
Docket No.	2007-0266-PST-E	Order Type	1660	
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Thomas Greimel	
Multi-Media		EC's Team	EnforcementTeam 6	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$7,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5% Enhancement	Subtotals 2, 3, & 7	\$375
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Notes: Enhancement for one NOV with same or similar violations.

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

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	X	(mark with x)

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

Total EB Amounts	\$4,433	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$10,000	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$7,875
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount	\$7,875
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$7,875
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$7,875
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Screening Date 22-Feb-2007

Docket No. 2007-0266-PST-E

PCW

Respondent Sam W. McWhorter

Policy Revision 2 (September 2002)

Case ID No. 32766

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN101655462

Media [Statute] Petroleum Storage Tank

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 (number of NOVs meeting criteria)	1	5%
	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) 5%

>> 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

Enhancement for one NOV with same or similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 22-Feb-2007

Docket No. 2007-0266-PST-E

PCW

Respondent Sam W. McWhorter

Policy Revision 2 (September 2002)

Case ID No. 32766

PCW Revision January 9, 2007

Reg. Ent. Reference No. RN101655462

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Thomas Greimel

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 334.47(a)(2)

Violation Description

Failed to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR

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

Percent

>> Programmatic Matrix

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

Percent

Matrix Notes

Human health or the environment could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events

Number of violation days

mark only one with an x	daily	<input type="text"/>
	monthly	<input checked="" type="checkbox"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Three monthly events are recommended (one month per tank) from the February 2, 2007 investigation date to the February 22, 2007 screening date.

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 Sam W. McWhorter
Case ID No. 32766
Reg. Ent. Reference No. RN101655462
Media Petroleum Storage Tank
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				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$10,000	22-Dec-1998	1-Nov-2007	8.9	\$4,433	n/a	\$4,433

Notes for DELAYED costs

Estimated cost to permanently remove the UST system from service. Date Required is the date when the respondent was required to upgrade the UST system. Final Date is the date the respondent is projected to come into 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

\$10,000

TOTAL

\$4,433

Compliance History

Customer/Respondent/Owner-Operator: CN600892343 McWhorter Sam W. Classification: AVERAGE Rating: 1.50
 Regulated Entity: RN101655462 Sam W. McWhorter Classification: AVERAGE Site Rating: 1.50
 ID Number(s): PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 28948
 Location: 1908 W BROADWAY, VAN HORN, TX, 79855 Rating Date: September 01 06 Repeat Violator: NO
 TCEQ Region: REGION 06 - EL PASO
 Date Compliance History Prepared: February 28, 2007
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: February 28, 2002 to February 28, 2007
 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)? | 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.)
- | | | | |
|---|------------|----------|--|
| 1 | 06/26/2006 | (483786) | |
| 2 | 11/14/2006 | (519097) | |
| 3 | 02/09/2007 | (539035) | |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|---|-----------------|----------|
| Date: | 11/10/2006 | (519097) | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 334, SubChapter C 334.47(a)(2) | | |
| Description: | Failure to perform the permanent removal of USTs that have not met the upgrade requirements for systems installed prior to 12/22/1988. The upgrade requirements include corrosion protection, spill prevention, overfill prevention, and financial assurance. | | |
- 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
SAM W. MCWHORTER
RN101655462

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2007-0266-PST-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 Sam W. McWhorter ("Mr. McWhorter") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. McWhorter represented by Mr. Ori T. White of the law firm of Ori T. White & Associates, P.C., appear before the Commission and together stipulate that:

1. Mr. McWhorter owns and operates a former convenience store with retail sales of gasoline located at 1908 West Broadway, Van Horn, Culberson County, Texas (the "Facility").
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. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Mr. McWhorter agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. McWhorter is subject to the Commission's jurisdiction.
4. Mr. McWhorter received notice of the violations alleged in Section II ("Allegations") on or about March 6, 2007.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. McWhorter of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of seven thousand eight hundred seventy-five dollars (\$7,875.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. McWhorter has paid five hundred twenty-five dollars (\$525.00) of the administrative penalty. The remaining amount of seven thousand three hundred fifty dollars (\$7,350.00) of the administrative penalty shall be payable in 35 monthly payments of two hundred ten dollars (\$210.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Mr. McWhorter fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, 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, Mr. McWhorter's failure to meet the payment schedule of this Agreed Order constitutes the failure by Mr. McWhorter to timely and satisfactorily comply with all of the terms of this Agreed Order.
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. McWhorter 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. McWhorter 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

1. Mr. McWhorter is alleged to have violated 30 TEX. ADMIN. CODE § 334.47(a)(2) by failing to permanently remove, from service no later than 60 days after the prescribed upgrade implementation date, three USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements as documented on February 2, 2007.

III. DENIALS

Mr. McWhorter generally denies each allegation in Section II (“Allegations”).

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. McWhorter pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and Mr. McWhorter’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: Sam W. McWhorter, Docket No. 2007-0266-PST” 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. McWhorter shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, Mr. McWhorter shall permanently remove the UST system from service in accordance with 30 TEX. ADMIN. CODE § 334.55; and
 - b. Within 45 days after the effective date of this Agreed Order, Mr. McWhorter shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate 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.”

This 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

and

Terry McMillian, Waste Section Manager
Texas Commission on Environmental Quality
El Paso Regional Office
401 East Franklin Avenue, Suite 560
El Paso, Texas 79901-1206

3. The provisions of this Agreed Order shall apply to and be binding upon Mr. McWhorter. Mr. McWhorter is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Mr. McWhorter 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. McWhorter's failure to comply is not a violation of this Agreed Order. Mr. McWhorter shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. McWhorter shall notify the Executive Director within seven days after Mr. McWhorter 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. McWhorter shall be made in writing to the Executive Director. Extensions are not effective until Mr. McWhorter 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. McWhorter 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) 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. McWhorter, or three days after the date on which the Commission mails notice of the Order to Mr. McWhorter, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

Sam W. McWhorter
DOCKET NO. 2007-0266-PST-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Handwritten Signature]

For the Executive Director

11/28/07

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 Sam W. McWhorter's failure to timely pay the penalty amount, may result in:

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

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

[Handwritten Signature]

Signature

Sept 17, 2007

Date

Samuel W. McWhorter

Name (Printed or typed)
Authorized representative of
Sam W. McWhorter

Owner

Title