EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2007-1313-MLM-E **TCEQ ID:** RN105295208 **CASE NO.:** 34483

RESPONDENT NAME: Clifco Construction, Ltd.

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	X 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	X WATER RIGHTS

SITE WHERE VIOLATION(S) OCCURRED: Ranchcrest, located at the intersection of Ruehl Road and Old Hempstead Road, Magnolia, Montgomery County

TYPE OF OPERATION: Sand mining operation

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

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

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 January 28, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Terry Murphy, Enforcement Division, Enforcement Team 4, MC 149, (512) 239-5025; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171

Respondent: Mr. Cliff David, Vice President, Clifco Construction, Ltd., 9019 Pine Lane, Magnolia, Texas 77354

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: ___ Complaint _X_ Routine ___ Enforcement Follow-up ___ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** June 13, 2007 **Date of NOV/NOE Relating to this Case:** August 3, 2007 (NOE) **Background Facts:** This was a routine investigation. Two violations were documented. **WATER** 1) Failed to obtain authorization to discharge storm water associated with industrial activities [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)]. 2) Failed to obtain rights to divert, store, impound, take or use water at the Site from an identified United States Geological Survey ("USGS") intermittent creek. Specifically, the construction of Pond Number 4 was being conducted instream in an identified USGS intermittent creek [30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE § 11.121].	**Total Assessed:** $4,500 **Total Deferred:** $900 _X_ Expedited Settlement ___Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $100 (remaining $3,500 due in 35 monthly payments of $100 each) **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. Within 30 days after the effective date of this Agreed Order: i. Develop and implement a Storm Water Pollution Prevention Plan and submit a Notice of Intent letter to comply with the Multi-Sector Industrial General Permit requirements; and ii. Submit an administratively complete permit application for the right to divert, store, impound, take or use water at the Site. b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing; c. Within 75 days after the effective date of the Agreed Order, submit written certification to demonstrate compliance with Ordering Provisions a. and b.; and d. Within 180 days after the effective date of this Agreed Order, submit written certification to demonstrate that a water right has been obtained or that the diversion, storing, impounding, taking, and/or use of state water has ceased until authorization is obtained.

Additional ID No(s).: None

Penalty Calculation Worksheet (PCW)

TCEQ

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

DATES					
Assigned	13-Aug-2007				
PCW	25-Aug-2007	Screening	20-Aug-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Clifco Construction, Ltd.		
Reg. Ent. Ref. No.	RN105295208		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	34483	No. of Violations	1
Docket No.	2007-1313-MLM-E	Order Type	1660
Media Program(s)	Water Rights	Enf. Coordinator	Deana Holland
Multi-Media		EC's Team	EnforcementTeam 1
Admin. Penalty $ Limit Minimum	$0	Maximum	$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* **$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 is recommended due to no previous compliance history.

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

Notes: The 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	$100
Approx. Cost of Compliance	$2,500

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

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 **$1,500**

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* **$1,500**

DEFERRAL — 20% Reduction — *Adjustment* **-$300**

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 **$1,200**

Screening Date 20-Aug-2007 **Docket No.** 2007-1313-MLM-E **PCW**

Respondent Clifco Construction, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 34483

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105295208

Media [Statute] Water Rights

Enf. Coordinator Deana Holland

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 is recommended due to no previous compliance history.

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

Screening Date 20-Aug-2007 **Docket No.** 2007-1313-MLM-E **PCW**

Respondent Clifco Construction, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 34483

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105295208

Media [Statute] Water Rights

Enf. Coordinator Deana Holland

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 297.11 and Tex. Water Code § 11.121

Violation Description Failed to obtain rights to divert, store, impound, take or use water at the Site from an identified USGS intermittent creek. Specifically, the construction of Pond number 4 was being conducted instream in an identified USGS intermittent creek.

Base Penalty $5,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: 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 $4,500

$500

Violation Events

Number of Violation Events 3

68 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $1,500

Three monthly events are recommended from the investigation date of June 13, 2007 to the screening date of August 20, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $100

Statutory Limit Test

Violation Final Penalty Total $1,500

This violation Final Assessed Penalty (adjusted for limits) $1,500

Economic Benefit Worksheet

Respondent Clifco Construction, Ltd.
Case ID No. 34483
Reg. Ent. Reference No. RN105295208
Media Water Rights
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	$2,500	13-Jun-2007	1-Apr-2008	0.8	$100	n/a	$100
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated costs of obtaining a water rights permit. The date required is the investigation date and the final date is the projected 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: $2,500

TOTAL: $100

Penalty Calculation Worksheet (PCW)

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

TCEQ

DATES					
Assigned	13-Aug-2007				
PCW	25-Aug-2007	Screening	20-Aug-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Clifco Construction, Ltd.		
Reg. Ent. Ref. No.	RN105295208		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	34483	No. of Violations	1
Docket No.	2007-1313-MLM-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Deana Holland
Multi-Media		EC's Team	EnforcementTeam 1
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $3,000

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 is recommended due to no previous compliance history.

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

Notes: The 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	$80
Approx. Cost of Compliance	$2,000

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $3,000

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 $3,000

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $3,000

DEFERRAL — 20% Reduction — *Adjustment* -$600

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 $2,400

Screening Date 20-Aug-2007 **Docket No.** 2007-1313-MLM-E **PCW**

Respondent Clifco Construction, Ltd.

Case ID No. 34483

Reg. Ent. Reference No. RN105295208

Media [Statute] Water Quality

Enf. Coordinator Deana Holland

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 is recommended due to no previous compliance history.

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

Screening Date 20-Aug-2007 **Docket No.** 2007-1313-MLM-E **PCW**

Respondent Clifco Construction, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 34483

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN105295208

Media [Statute] Water Quality

Enf. Coordinator Deana Holland

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c).

Violation Description Failed to obtain authorization to discharge storm water associated with industrial activities, as documented during an investigation conducted on June 13, 2007.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: 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 $9,000

$1,000

Violation Events

Number of Violation Events 3

68 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $3,000

Three monthly events are recommended from the investigation date of June 13, 2007 to the screening date of August 20, 2007.

Economic Benefit (EB) for this violation

Estimated EB Amount $80

Statutory Limit Test

Violation Final Penalty Total $3,000

This violation Final Assessed Penalty (adjusted for limits) $3,000

Economic Benefit Worksheet

Respondent Clifco Construction, Ltd.
Case ID No. 34483
Reg. Ent. Reference No. RN105295208
Media Water Quality
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)	$2,000	13-Jun-2007	1-Apr-2008	0.8	$80	n/a	$80

Notes for DELAYED costs: The estimated cost of preparing and implementing a storm water pollution prevention plan and submitting a Notice of Intent ("NOI"). The date required is the date of the investigation and the final date is the projected 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: $80

Compliance History

Customer/Respondent/Owner-Operator:	CN603233990	Clifco Construction, Ltd.	Classification:	Rating:
Regulated Entity:	RN105295208	RANCHCREST	Classification:	Site Rating:

ID Number(s):

Location: INTX OF RUEHL RD & OLD HEMPSTEAD RD, MAGNOLIA, MONTGOMERY COUNTY, TX

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: August 25, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: August 25, 2002 to August 25, 2007

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

Name: Deana Holland Phone: 239-2504

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.)

1 08/06/2007 (570215)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

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**
CLIFCO CONSTRUCTION, LTD.	§	
RN105295208	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2007-1313-MLM-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 Clifco Construction, Ltd. ("Clifco") under the authority of TEX. WATER CODE chs. 7, 11, and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Clifco appear before the Commission and together stipulate that:

1. Clifco owns and operates a sand mining operation located at the intersection of Ruehl Road and Old Hempstead Road in Magnolia, Montgomery County, Texas (the "Site").

2. Clifco has discharged wastewater into or adjacent to any water in the state under TEX. WATER CODE ch. 26.

3. Clifco adjoins, is contiguous with or surrounds state water as defined in TEX. WATER CODE § 11.021 and 30 TEX. ADMIN. CODE § 297.1(46).

4. The Commission and Clifco agree that the Commission has jurisdiction to enter this Agreed Order, and that Clifco is subject to the Commission's jurisdiction.

5. Clifco received notice of the violations alleged in Section II ("Allegations") on or about August 8, 2007.

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

7. An administrative penalty in the amount of Four Thousand Five Hundred Dollars ($4,500) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Clifco has paid Three Thousand Six Hundred Dollars ($3,600) of the administrative penalty and Nine Hundred Dollars ($900) is deferred contingent upon Clifco's 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 Clifco fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Clifco to pay all or part of the deferred penalty.

8. 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.

9. The Executive Director of the TCEQ and Clifco have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

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 Clifco 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

As operator of the Site, Clifco is alleged to have:

1. Failed to obtain authorization to discharge storm water associated with industrial activities, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c), as documented during an investigation conducted on June 13, 2007.

2. Failed to obtain rights to divert, store, impound, take or use water at the Site from an identified United States Geological Survey ("USGS") intermittent creek, in violation of 30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE § 11.121, as documented during an investigation conducted on June 13, 2007. Specifically, the construction of Pond Number 4 was being conducted instream in an identified USGS intermittent creek

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Clifco pay an administrative penalty as set forth in Section I, Paragraph 7 above. The payment of this administrative penalty and Clifco's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations, which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Clifco Construction, Ltd., Docket No. 2007-1313-MLM-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 Clifco shall undertake the following technical requirements:

   a. Within 30 days after the effective date of this Agreed Order:

      i. Develop and implement a Storm Water Pollution Prevention Plan and submit a Notice of Intent letter to comply with the Multi-Sector Industrial General Permit requirements in accordance with 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c) to:

      Texas Commission on Environmental Quality
      Wastewater Permitting Section, MC 148
      P.O. Box 13087
      Austin, Texas 78711-3087

      ii. Submit an administratively complete permit application for the right to divert, store, impound, take or use water at the Site, as required by 30 TEX. ADMIN. CODE ch. 297 to:

      Water Rights Permitting and Availability Section, MC 160
      Texas Commission on Environmental Quality
      P.O. Box 13087
      Austin, Texas 78711-3087

b. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing;

c. Within 75 days after the effective date of the Agreed Order, submit written certification to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b., as described in Ordering Provision No 2.d. below; and

d. Within 180 days after the effective date of this Agreed Order, submit written certification to demonstrate that a water right has been obtained or that the diversion, storing, impounding, taking, and/or use of state water has ceased until authorization is obtained. The certification shall include detailed supporting documentation including photographs, 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines 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:

Water Section, Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Avenue, Suite H
Houston, Texas 77023-1486

3. The provisions of this Agreed Order shall apply to and be binding upon Clifco. Clifco is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.

4. If Clifco 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, Clifco's failure to comply is not a violation of this Agreed Order. Clifco shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred.

Clifco shall notify the Executive Director within seven days after Clifco 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 Clifco shall be made in writing to the Executive Director. Extensions are not effective until Clifco 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 Clifco 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 Clifco, or three days after the date on which the Commission mails notice of the Order to Clifco, 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 Date 2/7/2008

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 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 failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

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

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

_____ _____
Signature Date 11-20-07

_____ _____
Name (Printed or typed) Title VP
Authorized Representative of
Clifco Construction, Ltd.

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.