

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.:** 2007-1947-MLM-E **TCEQ ID:** RN105077275 **CASE NO.:** 35049

**RESPONDENT NAME:** Diamondback Pumping GP LLC

|  |  |  |
|--|--|--|
| <b>ORDER TYPE:</b>   |  |  |
| <input type="checkbox"/> 1660 AGREED ORDER   | <input checked="" 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                               |  |
| <b>CASE TYPE:</b>  |  |  |
| <input type="checkbox"/> AIR   | <input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply) | <input checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE   |
| <input type="checkbox"/> PUBLIC WATER SUPPLY   | <input type="checkbox"/> PETROLEUM STORAGE TANKS                       | <input type="checkbox"/> OCCUPATIONAL CERTIFICATION                  |
| <input checked="" 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Diamondback Pumping Services, 14024 Highway 171, Cresson, Johnson County</p> <p><b>TYPE OF OPERATION:</b> Hydraulic fracturing company</p> <p><b>SMALL BUSINESS:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on April 28, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b><br/> <b>TCEQ Attorney/SEP Coordinator:</b> None<br/> <b>TCEQ Enforcement Coordinator:</b> Mr. Colin Barth, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-0086; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171<br/> <b>Respondent:</b> Mr. Mike Spencer, Manager, Diamondback Pumping GP LLC, 14024 Highway 171, Cresson, Texas 76035<br/> Ms. Ashley Miller, QHSE Manager, Diamondback Pumping GP LLC, 14024 Highway 171, Cresson, Texas 76035<br/> <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p> |  |  |

**VIOLATION SUMMARY CHART:**

| VIOLATION INFORMATION   | PENALTY CONSIDERATIONS   | CORRECTIVE ACTIONS TAKEN/REQUIRED   |
|---|--|---|
| <p><b>Type of Investigation:</b><br/> <input type="checkbox"/> Complaint<br/> <input checked="" type="checkbox"/> Routine<br/> <input type="checkbox"/> Enforcement Follow-up<br/> <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> September 11, 2007</p> <p><b>Date of NOV/NOE Relating to this Case:</b> November 19, 2007 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation that involved a fish kill.</p> <p><b>WATER/WASTE</b></p> <p>1) Failed to notify the TCEQ as soon as possible but no later than 24 hours after the discovery of a spill or discharge [30 TEX. ADMIN. CODE § 327.3(b)].</p> <p>2) Failed to prevent the discharge of industrial waste into or adjacent to water in the state [30 TEX. ADMIN. CODE § 335.4(1) and TEX. WATER CODE § 26.121(a)].</p> | <p><b>Total Assessed:</b> \$8,570</p> <p><b>Total Deferred:</b> \$0<br/> <input type="checkbox"/> Expedited Settlement<br/> <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid to General Revenue:</b> \$8,570</p> <p><b>Site Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b><br/> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Orders Justification:</b> Environmental receptors have been exposed to pollutants which exceed levels that are protective.</p> | <p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that the Respondent, through Environmental Consultants, Inc., implemented the following corrective measures at the Facility:</p> <p>a. On September 11, 2007, pumped contaminated water from the tributary into a frac tank;</p> <p>b. On September 12, 2007 and September 20, 2007, excavated contaminated soil from the Facility and took soil samples. On October 10, 2007, soil sample results were complete and the analysis revealed a "non-detect" for hazardous waste;</p> <p>c. On September 22, 2007, sent contaminated soil to an authorized landfill for proper disposal;</p> <p>d. On October 5, 2007, began training employees concerning the notification requirements of the TCEQ and how to deal with any discharges that may occur at the Facility; and</p> <p>e. On October 10, 2007, disposed of the contaminated water at an authorized facility.</p> |

Additional ID No(s): 79971



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

|              |          |            |           |            |         |  |
|--------------|----------|------------|-----------|------------|---------|--|
| <b>DATES</b> | Assigned | 3-Dec-2007 | Screening | 4-Dec-2007 | EPA Due |  |
|              | PCW      | 4-Dec-2007 |           |            |         |  |

|  |                            |
|--|----------------------------|
| <b>RESPONDENT/FACILITY INFORMATION</b> |                            |
| Respondent                             | Diamondback Pumping GP LLC |
| Reg. Ent. Ref. No.                     | RN105077275                |
| Facility/Site Region                   | 4-Dallas/Fort Worth        |
| Major/Minor Source                     | Minor                      |

|                         |                                |                   |                    |          |
|-------------------------|--------------------------------|-------------------|--------------------|----------|
| <b>CASE INFORMATION</b> |                                |                   |                    |          |
| Enf./Case ID No.        | 35049                          | No. of Violations | 2                  |          |
| Docket No.              | 2007-1947-MLM-E                | Order Type        | Findings           |          |
| Media Program(s)        | Industrial and Hazardous Waste | Enf. Coordinator  | Colin Barth        |          |
| Multi-Media             | Water Quality                  | EC's Team         | Enforcement Team 7 |          |
| Admin. Penalty \$       | Limit Minimum                  | \$0               | Maximum            | \$10,000 |

## Penalty Calculation Section

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

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

Notes

**Culpability**   Enhancement **Subtotal 4**

Notes

**Good Faith Effort to Comply**  Reduction **Subtotal 5**

Before NOV      NOV to EDRP/Settlement Offer

|               |                                     |                          |
|---------------|-------------------------------------|--------------------------|
| Extraordinary | <input type="text"/>                | <input type="text"/>     |
| Ordinary      | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| N/A           | <input type="checkbox"/>            | (mark with x)            |

Notes

**Total EB Amounts**  **Subtotal 6**   
 Approx. Cost of Compliance  \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

Notes

**PAYABLE PENALTY**

Screening Date 4-Dec-2007

Docket No. 2007-1947-MLM-E

PCW

Respondent Diamondback Pumping GP LLC

Policy Revision 2 (September 2002)

Case ID No. 35049

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN105077275

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Colin Barth

### 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   | 1                 | 2%      |
| 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%      |
| <i>Please Enter Yes or No</i> |  |                   |         |
| 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) 2%

>> 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 received one NOV for dissimilar violations at this Facility within the past five years.

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

|  |   |   |                                    |   |                      |                                      |                                    |
|--|---|---|------------------------------------|---|----------------------|--------------------------------------|------------------------------------|
| <b>Screening Date</b> 4-Dec-2007                                   | <b>Docket No.</b> 2007-1947-MLM-E   | <b>PCW</b>                                |                                    |   |                      |                                      |                                    |
| <b>Respondent</b> Diamondback Pumping GP LLC                       | <small>Policy Revision 2 (September 2002)</small>   |   |                                    |   |                      |                                      |                                    |
| <b>Case ID No.</b> 35049   | <small>PCW Revision November 6, 2007</small>  |   |                                    |   |                      |                                      |                                    |
| <b>Reg. Ent. Reference No.</b> RN105077275                         |   |   |                                    |   |                      |                                      |                                    |
| <b>Media [Statute]</b> Industrial and Hazardous Waste              |   |   |                                    |   |                      |                                      |                                    |
| <b>Enf. Coordinator</b> Colin Barth                                |   |   |                                    |   |                      |                                      |                                    |
| <b>Violation Number</b> <input type="text" value="1"/>             |   |   |                                    |   |                      |                                      |                                    |
| <b>Rule Cite(s)</b>  | 30 Tex. Admin. Code § 327.3(b)  |   |                                    |   |                      |                                      |                                    |
| <b>Violation Description</b>                                       | Failed to notify the agency as soon as possible but no later than 24 hours after the discovery of a spill or discharge, as documented during an investigation conducted on September 11, 2007. Specifically, on September 5, 2007 a discharge of Plexgel 907L-E occurred at the Facility that was not reported to the TCEQ. |   |                                    |   |                      |                                      |                                    |
| <b>Base Penalty</b>  |   | <input type="text" value="\$10,000"/>     |                                    |   |                      |                                      |                                    |
| <b>&gt;&gt; Environmental, Property and Human Health Matrix</b>    |   |   |                                    |   |                      |                                      |                                    |
| <b>OR</b>  | <b>Harm</b>   |   |                                    |   |                      |                                      |                                    |
|  | <b>Release</b>  | <b>Major</b>                              | <b>Moderate</b>                    | <b>Minor</b>                              |                      |                                      |                                    |
|  | Actual  | <input type="text"/>                      | <input type="text"/>               | <input type="text"/>                      |                      |                                      |                                    |
| Potential  | <input type="text"/>  | <input type="text"/>                      | <input type="text"/>               |   |                      |                                      |                                    |
| <b>Percent</b>   |   |   |                                    | <input type="text" value="0%"/>           |                      |                                      |                                    |
| <b>&gt;&gt; Programmatic Matrix</b>                                |   |   |                                    |   |                      |                                      |                                    |
|  |   |   | <b>Falsification</b>               | <b>Major</b>                              | <b>Moderate</b>      | <b>Minor</b>                         |                                    |
|  |   |   | <input type="text"/>               | <input checked="" type="text" value="x"/> | <input type="text"/> | <input type="text"/>                 |                                    |
| <b>Percent</b>   |   |   |                                    | <input type="text" value="10%"/>          |                      |                                      |                                    |
| <b>Matrix Notes</b>  | 100% of the rule requirements were not met.   |   |                                    |   |                      |                                      |                                    |
| <b>Adjustment</b>  |   |   |                                    | <input type="text" value="\$9,000"/>      |                      |                                      |                                    |
|  |   |   |                                    |   |                      | <input type="text" value="\$1,000"/> |                                    |
| <b>Violation Events</b>  |   |   |                                    |   |                      |                                      |                                    |
| <b>Number of Violation Events</b>                                  |   | <input type="text" value="1"/>            |                                    | <b>Number of violation days</b>           |                      | <input type="text" value="29"/>      |                                    |
| <small>mark only one with an x</small>                             | daily   | <input type="text"/>                      |                                    |   |                      |                                      |                                    |
|  | monthly   | <input type="text"/>                      |                                    |   |                      |                                      |                                    |
|  | quarterly   | <input type="text"/>                      |                                    |   |                      |                                      |                                    |
|  | semiannual  | <input type="text"/>                      |                                    |   |                      |                                      |                                    |
|  | annual  | <input type="text"/>                      |                                    |   |                      |                                      |                                    |
|  | single event  | <input checked="" type="text" value="x"/> |                                    |   |                      |                                      |                                    |
| <b>Violation Base Penalty</b>                                      |   |   |                                    |   |                      | <input type="text" value="\$1,000"/> |                                    |
| One single event is recommended.                                   |   |   |                                    |   |                      |                                      |                                    |
| <b>Economic Benefit (EB) for this violation</b>                    |   |   |                                    | <b>Statutory Limit Test</b>               |                      |                                      |                                    |
| <b>Estimated EB Amount</b>   |   |   | <input type="text" value="\$100"/> |   |                      | <b>Violation Final Penalty Total</b> | <input type="text" value="\$779"/> |
| <b>This violation Final Assessed Penalty (adjusted for limits)</b> |   |   |                                    |   |                      | <input type="text" value="\$779"/>   |                                    |

## Economic Benefit Worksheet

**Respondent** Diamondback Pumping GP LLC  
**Case ID No.** 35049  
**Reg. Ent. Reference No.** RN105077275  
**Media** Industrial and Hazardous Waste  
**Violation No.** 1

|                         |                              |
|-------------------------|------------------------------|
| <b>Percent Interest</b> | <b>Years of Depreciation</b> |
| 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)        |  |  |  | 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)             | \$100 | 5-Sep-2007 | 6-Sep-2007 | 0.0 | \$0 | \$100 | \$100 |

Notes for AVOIDED costs

Avoided cost of notifying the TCEQ after the spill incident that took place on September 5, 2007. The Date Required is the date in which the discharge took place and the Final Date is 24 hours after the discharge.

Approx. Cost of Compliance

\$100

TOTAL

\$100

|  |  |                                       |
|--|--|---------------------------------------|
| <b>Screening Date</b> 4-Dec-2007                       | <b>Docket No.</b> 2007-1947-MLM-E  | <b>PCW</b>                            |
| <b>Respondent</b> Diamondback Pumping GP LLC           | <i>Policy Revision 2 (September 2002)</i>  |                                       |
| <b>Case ID No.</b> 35049                               | <i>PCW Revision November 6, 2007</i>   |                                       |
| <b>Reg. Ent. Reference No.</b> RN105077275             |  |                                       |
| <b>Media [Statute]</b> Industrial and Hazardous Waste  |  |                                       |
| <b>Enf. Coordinator</b> Colin Barth                    |  |                                       |
| <b>Violation Number</b> <input type="text" value="2"/> |  |                                       |
| <b>Rule Cite(s)</b>                                    | <input type="text" value="30 Tex. Admin. Code § 335.4(1) and Tex. Water Code § 26.121(a)"/>  |                                       |
| <b>Violation Description</b>                           | <input type="text" value="Failed to prevent the discharge of industrial waste into or adjacent to water in the state, as documented during an investigation conducted on September 11, 2007. Specifically, a 275-gallon tote containing Plexgel 907L-E discharged into a tributary of Fall Creek resulting in 18 fish killed."/> |                                       |
| <b>Base Penalty</b>                                    |  | <input type="text" value="\$10,000"/> |

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

|           |                |                                |          |   |       |
|-----------|----------------|--------------------------------|----------|---|-------|
| OR        | <b>Harm</b>    |                                |          |   |       |
|           | <b>Release</b> | Major                          | Moderate |   | Minor |
|           | Actual         | <input type="text" value="x"/> |          |   |       |
| Potential |                |                                |          | <b>Percent</b> <input type="text" value="50%"/> |       |

**>> Programmatic Matrix**

|                     |  |       |          |       |  |
|---------------------|--|-------|----------|-------|--|
|                     | <b>Falsification</b>   | Major | Moderate | Minor |  |
|                     |  |       |          |       |  |
|                     | <b>Percent</b> <input type="text" value="0%"/>   |       |          |       |  |
| <b>Matrix Notes</b> | <input type="text" value="Human health or the environment has been exposed to pollutants which exceeded levels protective of human health or environmental receptors as a result of this violation."/> |       |          |       |  |

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

|                                |            |                                |
|--------------------------------|------------|--------------------------------|
| <i>mark only one with an x</i> | daily      |                                |
|                                | monthly    | <input type="text" value="x"/> |
|                                | quarterly  |                                |
|                                | semiannual |                                |
|                                | annual     |                                |
| single event                   |            |                                |

**Violation Base Penalty**

Two monthly events are recommended from the discharge date of September 5, 2007 to the compliance date of October 10, 2007.

|   |   |
|---|---|
| <b>Economic Benefit (EB) for this violation</b>   | <b>Statutory Limit Test</b>   |
| <b>Estimated EB Amount</b> <input type="text" value="\$14"/>  | <b>Violation Final Penalty Total</b> <input type="text" value="\$7,791"/> |
| <b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$7,791"/> |   |

### Economic Benefit Worksheet

**Respondent** Diamondback Pumping GP LLC  
**Case ID No.** 35049  
**Reg. Ent. Reference No.** RN105077275  
**Media** Industrial and Hazardous Waste  
**Violation No.** 2

|                         |                              |
|-------------------------|------------------------------|
| <b>Percent Interest</b> | <b>Years of Depreciation</b> |
| 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)        | \$3,000 | 5-Sep-2007 | 10-Oct-2007 | 0.1 | \$14 | n/a | \$14 |

Notes for DELAYED costs

Estimated cost to remove and properly dispose of contaminated soil and water. The Date required is the date of the spill and the Final Date is the date the Respondent came 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

\$3,000

TOTAL

\$14

# Compliance History

|   |  |                              |                                    |                     |
|---|--|------------------------------|------------------------------------|---------------------|
| Customer/Respondent/Owner-Operator:   | CN603105065  | Diamondback Pumping GP LLC   | Classification: AVERAGE            | Rating: 3.01        |
| Regulated Entity:   | RN105077275  | DIAMONDBACK PUMPING SERVICES | Classification: AVERAGE BY DEFAULT | Site Rating: 3.01   |
| ID Number(s):   | AIR NEW SOURCE PERMITS<br>PETROLEUM STORAGE TANK<br>REGISTRATION | REGISTRATION<br>REGISTRATION |                                    | 79971<br>78587      |
| Location:   | 14024 N HIGHWAY 171, CRESSON, TX, 76035                          |                              | Rating Date: September 01 07       | Repeat Violator: NO |
| TCEQ Region:  | REGION 04 - DFW METROPLEX  |                              |                                    |                     |
| Date Compliance History Prepared:   | December 03, 2007  |                              |                                    |                     |
| Agency Decision Requiring Compliance History:   | Enforcement  |                              |                                    |                     |
| Compliance Period:  | December 03, 2002 to December 03, 2007                           |                              |                                    |                     |
| TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History |  |                              |                                    |                     |
| Name:   | <u>Colin Barth</u>   | Phone:                       | <u>512 239 0086</u>                |                     |

## 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.)
 

|   |            |          |
|---|------------|----------|
| 1 | 10/01/2007 | (595160) |
| 2 | 10/17/2007 | (598056) |
| 3 | 11/30/2007 | (599283) |
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 

|                 |  |          |
|-----------------|--|----------|
| Date:           | 10/01/2007   | (595160) |
| Self Report?    | NO   |          |
| Classification: | Major  |          |
| Citation:       | 30 TAC Chapter 281, SubChapter A 281.25(a)(4)  |          |
| Description:    | Failure to develop and implement a storm water pollution prevention plan (SWP3) and obtain permit coverage to discharge storm water at an industrial site. |          |
  - 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  
DIAMONDBACK PUMPING GP LLC  
RN105077275

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**AGREED ORDER**  
**DOCKET NO. 2007-1947-MLM-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality (“the Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Diamondback Pumping GP LLC (“the Respondent”) under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that they have certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

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

**I. FINDINGS OF FACT**

1. The Respondent owns and operates a hydraulic fracturing company at 14024 Highway 171 in Cresson, Johnson County, Texas (the “Facility”).



2. The Facility involves or involved the management of industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361 and has discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation on September 11, 2007, TCEQ staff documented the failure to notify the agency as soon as possible but no later than 24 hours after the discovery of a spill or discharge. Specifically, on September 5, 2007 a discharge of Plexgel 907L-E occurred at the Facility that was not reported to the TCEQ.
4. During an investigation on September 11, 2007, TCEQ staff documented the discharge of industrial waste into or adjacent to water in the state. Specifically, a 275-gallon tote containing Plexgel 907L-E discharged into a tributary of Fall Creek resulting in 18 fish killed.
5. The Respondent received notice of the violations on November 24, 2007.
6. The Executive Director recognizes that the Respondent, through Environmental Consultants, Inc., implemented the following corrective measures at the Facility:
  - a. On September 11, 2007, pumped contaminated water from the tributary into a frac tank;
  - b. On September 12, 2007 and September 20, 2007, excavated contaminated soil from the Facility and took soil samples. On October 10, 2007, soil sample results were complete and the analysis revealed a "non-detect" for hazardous waste;
  - c. On September 22, 2007, sent contaminated soil to an authorized landfill for proper disposal;
  - d. On October 5, 2007, began training employees concerning the notification requirements of the TCEQ and how to deal with any discharges that may occur at the Facility; and
  - e. On October 10, 2007, disposed of the contaminated water at an authorized facility.

## II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to notify the TCEQ as soon as possible but no later than 24 hours after the discovery of a spill or discharge, in violation of 30 TEX. ADMIN. CODE § 327.3(b).
3. As evidenced by Findings of Fact No. 4, the Respondent failed to prevent the discharge of industrial waste into or adjacent to water in the state, in violation of 30 TEX. ADMIN. CODE § 335.4(1) and TEX. WATER CODE § 26.121(a).



4. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
5. An administrative penalty in the amount of Eight Thousand Five Hundred Seventy Dollars (\$8,570) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Eight Thousand Five Hundred Seventy Dollar (\$8,570) administrative penalty.

### III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Eight Thousand Five Hundred Seventy Dollars (\$8,570) as set forth in Section II, Paragraph 5 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Diamondback Pumping GP LLC, Docket No. 2007-1947-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. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent 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.
3. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
4. 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.
5. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent 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.

6. 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.
7. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.



## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*John S. Sullivan*  
For the Executive Director

3/21/2008  
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Diamondback Pumping GP LLC. I am authorized to agree to the attached Agreed Order on behalf of Diamondback Pumping GP LLC, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Diamondback Pumping GP LLC waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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.

*Ashley Miller*  
Signature

1/29/08  
Date

Ashley Miller  
Name (Printed or typed)  
Authorized Representative of  
Diamondback Pumping GP LLC

QHSE Manager  
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.

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.

6. 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.
7. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.