

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0244-MLM-E **TCEQ ID:** RN103149456 **CASE NO.:** 35346

RESPONDENT NAME: Ivan's Pumping Service, Inc.

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 checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input 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 checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Ivan's Pumping Service, 290 North Nevarez Road, El Paso, El Paso County</p> <p>TYPE OF OPERATION: Sludge transporter company</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received December 19, 2007, alleging that the Respondent was burying raw sewage. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on June 2, 2008. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Rebecca Johnson, Enforcement Division, Enforcement Team 5, MC R-12, (713) 422-8931; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Ms. Vanessa Lopez, President, Ivan's Pumping Service, Inc., 290 North Nevarez Road, El Paso, Texas 79927 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: December 19, 2007</p> <p>Date of Investigation Relating to this Case: January 2, 2008</p> <p>Date of NOV/NOE Relating to this Case: January 15, 2008 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER/WASTE</p> <p>Failed to prevent unauthorized dumping or disposal of municipal solid waste. Specifically, the Respondent was burying grease trap and grit trap waste at the Facility [30 TEX. ADMIN. CODE §§ 312.143 and 330.15(c)].</p>	<p>Total Assessed: \$950</p> <p>Total Deferred: \$190 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$760</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>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:</p> <p>a. Began disposing of grease trap and grit trap waste at a designated facility that has authorization to receive such waste, as documented in a manifest dated January 5, 2008; and</p> <p>b. Completed removal of the grease trap waste, grit trap waste, and impacted soil at the Facility on January 22, 2008. The excavated waste was disposed of at an authorized facility, as documented in a report and manifest submitted on February 11, 2008.</p>

Additional ID No(s): 21224



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision January 29, 2008

DATES	Assigned	22-Jan-2008	Screening	4-Feb-2008	EPA Due	
	PCW	1-Feb-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Ivan's Pumping Service, Inc.
Reg. Ent. Ref. No.	RN103149456
Facility/Site Region	6-El Paso
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35346	No. of Violations	1
Docket No.	2008-0244-MLM-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Rebecca Johnson
Multi-Media	Municipal Solid Waste	EC's Team	Enforcement Team 5
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 EDPRP/Settlement Offer

Extraordinary	<input type="text"/>
Ordinary	<input checked="" type="checkbox"/>
N/A	(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-Feb-2008

Docket No. 2008-0244-MLM-E

PCW

Respondent Ivan's Pumping Service, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35346

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN103149456

Media [Statute] Water Quality

Enf. Coordinator Rebecca Johnson

Compliance History Worksheet

>> **Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%

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

Penalty enhancement due to one Notice of Violation issued for same or similar violations.

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

Screening Date 4-Feb-2008	Docket No. 2008-0244-MLM-E	PCW
Respondent Ivan's Pumping Service, Inc.	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35346	<i>PCW Revision January 29, 2008</i>	
Reg. Ent. Reference No. RN103149456		
Media [Statute] Water Quality		
Enf. Coordinator Rebecca Johnson		
Violation Number <input type="text" value="1"/>		
Rule Cite(s)	30 Tex. Admin. Code §§ 312.143 and 330.15(c)	
Violation Description	Failed to prevent unauthorized dumping or disposal of municipal solid waste. Specifically, during a January 2, 2008 investigation it was documented that the Respondent was burying grease trap and grit trap waste at the Facility.	
Base Penalty		<input type="text" value="\$10,000"/>

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="text"/>	<input type="text"/>		<input checked="" type="text" value="x"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="10%"/>	

>> Programmatic Matrix

	Major	Moderate	Minor	
Falsification	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				Percent <input type="text" value="0%"/>

Matrix Notes
Human health and the environment have been exposed to an insignificant amount of pollutants which did not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment

Violation Events

Number of Violation Events <input type="text" value="1"/>	<input type="text" value="20"/>	Number of violation days
mark only one with an x daily <input type="text"/> monthly <input type="text"/> quarterly <input checked="" type="text" value="x"/> semiannual <input type="text"/> annual <input type="text"/> single event <input type="text"/>	Violation Base Penalty <input type="text" value="\$1,000"/>	

One quarterly event is recommended based on the January 2, 2008 investigation date to the January 22, 2008 compliance date.

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$2"/>	Violation Final Penalty Total <input type="text" value="\$950"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$950"/>	

Economic Benefit Worksheet

Respondent Ivan's Pumping Service, Inc.
Case ID No. 35346
Reg. Ent. Reference No. RN103149456
Media Water Quality
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
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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	\$800	2-Jan-2008	22-Jan-2008	0.1	\$2	n/a	\$2
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to dispose of the grit trap and grease trap waste at an authorized facility. Date required based on the investigation date. Final date based on the date the grit trap waste, grease trap waste, and contaminated soil were removed from the Facility and properly disposed of.

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

\$800

TOTAL

\$2

Compliance History

Customer/Respondent/Owner-Operator: CN600770713 Ivan's Pumping Service, Inc. Classification: AVERAGE Rating: 2.25
 Regulated Entity: RN103149456 IVAN'S PUMPING SERVICE Classification: AVERAGE Site Rating: 2.25
 ID Number(s): SLUDGE REGISTRATION 21224
 Location: 290 N NEVAREZ RD, EL PASO, TX, 79927 Rating Date: 9/1/2007 Repeat Violator: NO
 TCEQ Region: REGION 06 - EL PASO
 Date Compliance History Prepared: February 01, 2008
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: January 22, 2003 to January 22, 2008
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Rebecca Johnson Phone: (713) 422-8931

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 | 04/06/2004 | (268170) | |
| 2 | 05/13/2004 | (272093) | |
| 3 | 02/08/2007 | (536094) | |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|---|----------|--------------------------|
| Date: | 04/09/2004 | (268170) | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 312, SubChapter G 312.142(e) | | |
| Description: | Failure to submit a new registration application within 15 days of a change in operations for which the current registration no longer adequately describes the operations. | | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 312, SubChapter G 312.144(a) | | |
| Description: | Failure to maintain required identification markers on all vehicles listed in permit. | | |
| Self Report? | NO | | Classification: Minor |
| Citation: | 30 TAC Chapter 312, SubChapter G 312.144(a) | | |
| Description: | Failure to show the TCEQ Registration number on both sides of one of the transporter trucks. | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 312, SubChapter G 312.144(f) | | |
| Description: | Failure to prominently mark discharge valves and ports on all vehicles. | | |
| Self Report? | NO | | Classification: Moderate |
| Citation: | 30 TAC Chapter 312, SubChapter G 312.147(a) | | |
| Description: | Failure to dispose of waste within the required time limit. | | |
- 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
IVAN'S PUMPING SERVICE, INC.
RN103149456**

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§
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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2008-0244-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 Ivan's Pumping Service, Inc. ("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 appear before the Commission and together stipulate that:

1. The Respondent owns and operates a sludge transporter company at 290 North Nevarez Road in El Paso, El Paso County, Texas (the "Facility").
2. The Respondent has discharged sewage into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Facility involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
4. The Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
5. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 20, 2008.
6. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

7. An administrative penalty in the amount of Nine Hundred Fifty Dollars (\$950) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Seven Hundred Sixty Dollars (\$760) of the administrative penalty and One Hundred Ninety Dollars (\$190) is deferred contingent upon the Respondent'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 the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent 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 the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
10. The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Facility:
 - a. Began disposing of grease trap and grit trap waste at a designated facility that has authorization to receive such waste, as documented in a manifest dated January 5, 2008; and
 - b. Completed removal of the grease trap waste, grit trap waste, and impacted soil at the Facility on January 22, 2008. The excavated waste was disposed of at an authorized facility, as documented in a report and manifest submitted on February 11, 2008.
11. 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 the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
12. 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.
13. 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 owner and operator of the Facility, the Respondent is alleged to have failed to prevent unauthorized dumping or disposal of municipal solid waste, in violation of 30 TEX. ADMIN. CODE §§ 312.143 and 330.15(c), as documented during an investigation conducted on January 2, 2008. Specifically, the Respondent was burying grease trap and grit trap waste at the Facility.

III. DENIALS

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

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 7 above. The payment of this administrative penalty and the Respondent'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: Ivan's Pumping Service, Inc., Docket No. 2008-0244-MLM-E" to:

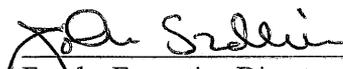
Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

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. 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.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

5/11/2008
~~3/20/08~~

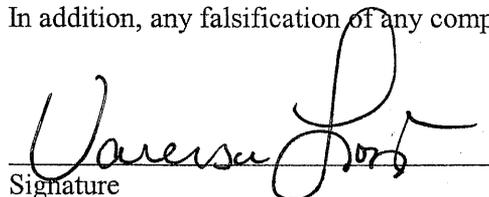
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity 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

3/20/08

Date

Vanessa Lopez

Name (Printed or typed)
Authorized Representative of
Ivan's Pumping Service, Inc.

President

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.

