

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0196-MLM-E **TCEQ ID:** RN101643880 **CASE NO.:** 35330

RESPONDENT NAME: Munsell Construction, 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 checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input checked="" type="checkbox"/> USED OIL
<p>SITE WHERE VIOLATION(S) OCCURRED: Munsell Construction, 1109 Fort McKavett Road, Mason County</p> <p>TYPE OF OPERATION: Farm and ranch improvement business</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received November 5, 2007, concerning used oil discharges. 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: Mr. Colin Barth, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-0086; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171 Respondent: Mr. Monte Munsell, President, Munsell Construction, Inc., P.O. Box 1118, Mason, Texas 76856 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: November 5, 2007</p> <p>Date of Investigation Relating to this Case: December 3, 2007</p> <p>Date of NOV/NOE Relating to this Case: January 7, 2008 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WASTE</p> <p>1) Failed to label or clearly mark containers used to store used oil with the words "used oil" [30 TEX. ADMIN. CODE § 324.6 and 40 CODE OF FEDERAL REGULATIONS § 279.22(c)].</p> <p>2) Failed to prevent the unauthorized discharge of municipal solid waste. Specifically, at the time of the investigation, used oil and other fluids was observed to have discharged from an aboveground storage tank system, a parts washer, and hydraulic oil containers, and contaminated an estimated 30 cubic yards of soil at the Site. Soil samples from the Site indicate elevated levels of Total Petroleum Hydrocarbons [30 TEX. ADMIN. CODE § 330.15(a)(1)].</p> <p>3) Failed to provide written notice to the agency of any changes or additional information concerning the status of above ground storage tanks. Specifically, at the time of the investigation, two aboveground storage tanks at the Site were not registered by the Respondent [30 TEX. ADMIN. CODE § 334.127(d)].</p>	<p>Total Assessed: \$2,355</p> <p>Total Deferred: \$471 <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: \$1,884</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order:</p> <p>i. Cease discharging municipal solid waste at the Site; and</p> <p>ii. Begin labeling all used oil containers at the Site with the words "used oil".</p> <p>b. Within 30 days after the effective date of this Agreed Order:</p> <p>i. Remove and properly dispose of any soil at the Site that reveals contamination above background levels; and</p> <p>ii. Provide written notice to the agency to indicate proper ownership of the two aboveground storage tanks located at the Site.</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a and b.</p>

Additional ID No(s): 55552



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision November 6, 2007

DATES	Assigned	14-Jan-2008	Screening	29-Jan-2008	EPA Due	
	PCW	29-Jan-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Munsell Construction, Inc.
Reg. Ent. Ref. No.	RN101643880
Facility/Site Region	8-San Angelo
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	35330	No. of Violations	1	
Docket No.	2008-0196-MLM-E	Order Type	1660	
Media Program(s)	Used Oil	Enf. Coordinator	Colin Barth	
Multi-Media	Petroleum Storage Tank and MSW	EC's Team	Enforcement Team 7	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$2,500

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 2% Enhancement **Subtotals 2, 3, & 7**

Notes

Culpability No 0% Enhancement **Subtotal 4**

Notes

Good Faith Effort to Comply 0% Reduction **Subtotal 5**

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	X	(mark with x)

Notes

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

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 29-Jan-2008

Docket No. 2008-0196-MLM-E

PCW

Respondent Munsell Construction, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35330

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101643880

Media [Statute] Used Oil

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 (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	1	2%
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%
<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 received one NOV for dissimilar violations at this site within the past five years.

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

Screening Date 29-Jan-2008	Docket No. 2008-0196-MLM-E	PCW		
Respondent Munsell Construction, Inc.	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 35330	<i>PCW Revision November 6, 2007</i>			
Reg. Ent. Reference No. RN101643880				
Media [Statute] Used Oil				
Enf. Coordinator Colin Barth				
Violation Number <input type="text" value="1"/>				
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 324.6 and 40 Code of Federal Regulations § 279.22(c)"/>			
Violation Description	<input 2007."="" 3,="" an="" as="" conducted="" december="" documented="" during="" investigation="" oil",="" on="" type="text" used="" value="Failed to label or clearly mark containers used to store used oil with the words "/>			
Base Penalty		<input type="text" value="\$2,500"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="0%"/>	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="text"/>	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="10%"/>	
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>			
		Adjustment	<input type="text" value="\$2,250"/>	
			<input type="text" value="\$250"/>	
Violation Events				
Number of Violation Events		<input type="text" value="1"/>	<input type="text" value="57"/> Number of violation days	
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$250"/>	
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text" value="x"/>		
<input type="text" value="One single event is recommended."/>				
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount <input type="text" value="\$9"/>		Violation Final Penalty Total <input type="text" value="\$255"/>		
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$255"/>		

Economic Benefit Worksheet

Respondent Munsell Construction, Inc.
Case ID No. 35330
Reg. Ent. Reference No. RN101643880
Media Used Oil
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	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				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$200	3-Dec-2007	10-Oct-2008	0.9	\$9	n/a	\$9

Notes for DELAYED costs Estimated cost to label or mark containers with the words "used oil". The Date Required is the investigation date and the Final Date is the estimated 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 TOTAL

\$200	\$9
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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 6, 2007

DATES	Assigned	14-Jan-2008			
	PCW	29-Jan-2008	Screening	29-Jan-2008	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Munsell Construction, Inc.
Reg. Ent. Ref. No.	RN101643880
Facility/Site Region	8-San Angelo
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35330	No. of Violations	2
Docket No.	2008-0196-MLM-E	Order Type	1660
Media Program(s)	MSW and Petroleum Storage Tank	Enf. Coordinator	Colin Barth
Multi-Media	Used Oil	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)	<i>Subtotal 1</i>	\$2,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5% Enhancement	<i>Subtotals 2, 3, & 7</i>	\$100
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Notes: The Respondent received one NOV for same or similar violations at this site within the past five years.

Culpability	No	0% Enhancement	<i>Subtotal 4</i>	\$0
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Notes: The Respondent does not meet the culpability criteria.

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

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

Total EB Amounts	\$49	0% Enhancement*	<i>Subtotal 6</i>	\$0
Approx. Cost of Compliance	\$1,060	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	<i>Final Subtotal</i>	\$2,100
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	<i>Adjustment</i>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

<i>Final Penalty Amount</i>	\$2,100
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STATUTORY LIMIT ADJUSTMENT	<i>Final Assessed Penalty</i>	\$2,100
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DEFERRAL	20% Reduction	<i>Adjustment</i>	-\$420
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$1,680
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PCW

Screening Date 29-Jan-2008

Docket No. 2008-0196-MLM-E

Respondent Munsell Construction, Inc.

Policy Revision 2 (September 2002)

Case ID No. 35330

PCW Revision November 6, 2007

Reg. Ent. Reference No. RN101643880

Media [Statute] MSW and Petroleum Storage Tank

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

The Respondent received one NOV for same or similar violations at this site within the past five years.

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

Screening Date 29-Jan-2008	Docket No. 2008-0196-MLM-E	PCW			
Respondent Munsell Construction, Inc.		<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 35330		<small>PCW Revision November 6, 2007</small>			
Reg. Ent. Reference No. RN101643880					
Media [Statute] MSW and Petroleum Storage Tank					
Enf. Coordinator Colin Barth					
Violation Number	1				
Rule Cite(s)	30 Tex. Admin. Code § 330.15(a)(1)				
Violation Description	Failed to prevent the unauthorized discharge of municipal solid waste, as documented during an investigation conducted on December 3, 2007. Specifically, at the time of the investigation, used oil and other fluids was observed to have discharged from an aboveground storage tank system, a parts washer, and hydraulic oil containers, and contaminated an estimated 30 cubic yards of soil at the Site. Soil samples from the Site indicate elevated levels of Total Petroleum Hydrocarbons.				
	Base Penalty	\$10,000			
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Release	Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	
			Percent	10%	
>> Programmatic Matrix					
	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
			Percent	0%	
Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants as a result of this violation.				
			Adjustment	\$9,000	
				\$1,000	
Violation Events					
	Number of Violation Events	1	Number of violation days	57	
	<small>mark only one with an x</small>	daily	<input type="text"/>		
		monthly	<input type="text"/>		
		quarterly	<input checked="" type="checkbox"/>	Violation Base Penalty	\$1,000
		semiannual	<input type="text"/>		
		annual	<input type="text"/>		
		single event	<input type="text"/>		
	One quarterly event is recommended from the investigation date of December 3, 2007 to the screening date January 29, 2008.				
Economic Benefit (EB) for this violation			Statutory Limit Test		
	Estimated EB Amount	\$38	Violation Final Penalty Total	\$1,050	
	This violation Final Assessed Penalty (adjusted for limits)			\$1,050	

Economic Benefit Worksheet

Respondent: Munsell Construction, Inc.
Case ID No.: 35330
Reg. Ent. Reference No.: RN101643880
Media: MSW and Petroleum Storage Tank
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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)	\$810	3-Dec-2007	10-Nov-2008	0.9	\$38	n/a	\$38

Notes for DELAYED costs

Estimated cost to remove and properly dispose of 30 cubic yards of contaminated soil at \$27 dollars a cubic yard. The Date Required is the investigation date and the Final Date is the estimated 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

\$810

TOTAL

\$38

Screening Date 29-Jan-2008	Docket No. 2008-0196-MLM-E	PCW
Respondent Munsell Construction, Inc.	<small>Policy Revision 2 (September 2002)</small>	
Case ID No. 35330	<small>PCW Revision November 6, 2007</small>	
Reg. Ent. Reference No. RN101643880		
Media [Statute] MSW and Petroleum Storage Tank		
Enf. Coordinator Colin Barth		
Violation Number	2	
Rule Cite(s)	30 Tex. Admin. Code § 334.127(d)	
Violation Description	Failed to provide written notice to the agency of any changes or additional information concerning the status of aboveground storage tanks, as documented during an investigation conducted on December 3, 2007. Specifically, at the time of the investigation, two aboveground storage tanks at the Site were not registered by the Respondent.	
	Base Penalty	\$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate		Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
				Percent <input style="width:50px;" type="text" value="0%"/>	

>> Programmatic Matrix

	Falsification			
	Major	Moderate	Minor	
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	x	<input type="checkbox"/>	<input type="checkbox"/>	
				Percent <input style="width:50px;" type="text" value="10%"/>
Matrix Notes	100% of the rule requirement was not met.			
				Adjustment <input style="width:50px;" type="text" value="\$9,000"/>

Violation Events

Number of Violation Events	<input style="width:30px;" type="text" value="1"/>		<input style="width:30px;" type="text" value="57"/>	Number of violation days
<small>mark only one with an x</small>	daily		monthly	
	quarterly		semiannual	
	annual		single event	x
Violation Base Penalty <input style="width:100px;" type="text" value="\$1,000"/>				
One single event is recommended.				

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input style="width:100px;" type="text" value="\$11"/>	Violation Final Penalty Total <input style="width:100px;" type="text" value="\$1,050"/>
This violation Final Assessed Penalty (adjusted for limits) <input style="width:100px;" type="text" value="\$1,050"/>	

Economic Benefit Worksheet

Respondent Munsell Construction, Inc.
 Case ID No. 35330
 Reg. Ent. Reference No. RN101643880
 Media MSW and Petroleum Storage Tank
 Violation No. 2

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
Bulldings				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)	\$250	3-Dec-2007	10-Oct-2008	0.9	\$11	n/a	\$11

Notes for DELAYED costs

Estimated cost to provide updated information to the agency regarding the status of the two aboveground storage tanks at the Site. The Date Required is the investigation date and the Final Date is the estimated 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 \$250

TOTAL \$11

Compliance History

Customer/Respondent/Owner-Operator: CN600884027 Munsell Construction, Inc. Classification: AVERAGE Rating: 1.50
Regulated Entity: RN101643880 MUNSELL CONSTRUCTION Classification: AVERAGE Site Rating: 1.50
ID Number(s):
Location: 1109 Fort McKavett Road, Mason County Rating Date: September 01 07 Repeat Violator: NO
TCEQ Region: REGION 08 - SAN ANGELO
Date Compliance History Prepared: January 24, 2008
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 24, 2003 to January 24, 2008
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Colin Barth Phone: 512 239 0086

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 08/04/2006 (490026)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 06/30/2006 (484789)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter A 330.15
Description: Failure to obtain authorization to discharge a solid waste into or adjacent to the waters of the state.
- 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
MUNSELL CONSTRUCTION, INC.
RN101643880**

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

AGREED ORDER DOCKET NO. 2008-0196-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 Munsell Construction, Inc. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 371 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 farm and ranch improvement business at 1109 Fort McKavett Road, Mason County, Texas (the "Site").
2. The Respondent's two aboveground storage tanks are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission. The Site involves or involved the management of used oil and involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE chs. 361 and 371.
3. 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.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about January 12, 2008.
5. 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.

6. An administrative penalty in the amount of Two Thousand Three Hundred Fifty-Five Dollars (\$2,355) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Thousand Eight Hundred Eighty-Four Dollars (\$1,884) of the administrative penalty and Four Hundred Seventy-One Dollars (\$471) 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.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have:

1. Failed to label or clearly mark containers used to store used oil with the words "used oil", in violation of 30 TEX. ADMIN. CODE § 324.6 and 40 CODE OF FEDERAL REGULATIONS § 279.22(c), as documented during an investigation conducted on December 3, 2007.
2. Failed to prevent the unauthorized discharge of municipal solid waste, in violation of 30 TEX. ADMIN. CODE § 330.15(a)(1), as documented during an investigation conducted on December 3, 2007. Specifically, at the time of the investigation, used oil and other fluids was observed to have discharged from an aboveground storage tank system, a parts washer, and hydraulic oil containers, and contaminated an estimated 30 cubic yards of soil at the Site. Soil samples from the Site indicate elevated levels of Total Petroleum Hydrocarbons.
3. Failed to provide written notice to the agency of any changes or additional information concerning the status of above ground storage tanks, in violation of 30 TEX. ADMIN. CODE § 334.127(d), as documented during an investigation conducted on December 3, 2007. Specifically, at the time of the investigation, two aboveground storage tanks at the Site were not registered by the Respondent.

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 6 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: Munsell Construction, Inc., Docket No. 2008-0196-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 the Respondent shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order:
 - i. Cease discharging municipal solid waste at the Site, in accordance with 30 TEX. ADMIN. CODE § 330.15(a)(1); and
 - ii. Begin labeling all used oil containers at the Site with the words "used oil", in accordance with 30 TEX. ADMIN. CODE § 324.6 and 40 CODE OF FEDERAL REGULATIONS § 279.22(c).
 - b. Within 30 days after the effective date of this Agreed Order:
 - i. Remove and properly dispose of any soil at the Site that reveals contamination above background levels, in accordance with 30 TEX. ADMIN. CODE § 330.15(a)(1);
 - ii. Provide written notice to the agency to indicate proper ownership of the two aboveground storage tanks located at the Site, in accordance with 30 TEX. ADMIN. CODE § 334.127(d). The notice should be submitted to

Petroleum Storage Tank Registration Team, MC 138
Permitting, Remediation, and Registration Section
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a and 2.b.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

The 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:

Waste Section Manager
San Angelo Regional Office
Texas Commission on Environmental Quality
622 South Oakes, Suite K
San Angelo, Texas 76903-7013

3. 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 Site operations referenced in this Agreed Order.
4. If the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent

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 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.
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 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

6/2/2008
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

3-6-08
Date

Monte Munsell

Name (Printed or typed)
Authorized Representative of
Munsell Construction, 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.

