

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0112-MLM-E TCEQ ID: RN103149076 CASE NO.: 37011

RESPONDENT NAME: A-1 LUFKIN RENTAL CENTER, INC. DBA A-1 JOHNNY PORTABLE TOILETS

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 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

SITE WHERE VIOLATION(S) OCCURRED 5572 South United States Highway 69, Lufkin, Angelina County

TYPE OF OPERATION: portable toilet rental facility

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: A complaint was received alleging that the Respondent was discharging raw sewage onto the ground. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: The complainant has not expressed a desire to protest this action or speak at agenda. No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired October 5, 2009. No comments were received.

CONTACTS AND MAILING LIST:

- TCEQ Attorney:** Ms. Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
- SEP Coordinator:** Ms. Sharon Blue, Litigation Division MC 175, (512) 239-2223
- TCEQ Enforcement Coordinator:** Ms. Carlie Konkol, Air Enforcement Section, TCEQ, MC R-14, (361) 825-3422
- TCEQ Regional Contact:** Mr. Ronald Hebert, Beaumont Regional Office, TCEQ, MC R-10, (409) 898-3838
- Respondent:** Mr. Joe Havard, Registered Agent/President, A-1 Lufkin Rental Center, 415 S. Angelina, Lufkin, Texas 75904 and P.O. Box 1157, Huntington, Texas 75949

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: October 30, 2008</p> <p>Date of Investigation Relating to this Case: November 5, 2008</p> <p>Date of NOE Relating to this Case: December 17, 2008</p> <p>Background Facts: The EDRP was filed May 14, 2009. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and a signed Agreed Order was received on July 30, 2009. The revised Agreed Order was received on September 18, 2009.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>MLM:</p> <p>1. Failed to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state [30 TEX. ADMIN. CODE § 330.15(a) and TEX. WATER CODE § 26.121(a)].</p> <p>2. Failed to operate with a valid registration [30 TEX. ADMIN. CODE § 312.142(a) and (d)].</p>	<p>Total Assessed: \$ 3,250</p> <p>Total Deferred: \$1,625 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input checked="" type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid to General Revenue: \$1,625</p> <p>The Respondent paid \$1,625 of the administrative penalty. The remaining amount of \$1,625 shall be conditionally offset by the completion of a Supplemental Environmental Project (SEP).</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Implement and complete a Supplemental Environmental Project (SEP) (See SEP Attachment A – 3rd party contribution for Cleanup of Illegal Dumpsites in Angelina County). 2. Immediately cease the unauthorized discharge of all rinse water and residual waste at the Facility; 3. Within 30 days, develop and implement measures to prevent the discharge of pollutants and ensure that rinse water and residual waste are properly disposed at an authorized facility; and 4. Within 45 days, submit written certification to demonstrate compliance with Ordering Provision Nos. 2 and 3.

Attachment A
Docket Number: 2009-0112-MLM-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: A-1 Lufkin Rental Center, Inc. dba A-1 Johnny Portable Toilets

Penalty Amount: Three Thousand Two Hundred Fifty Dollars (\$3,250)

SEP Offset Amount: One Thousand Six Hundred Twenty-Five Dollars (\$1,625)

Type of SEP: Pre-approved

Third-Party Recipient: Angelina Beautiful Clean – *Cleanup of Illegal Dumpsites*

Location of SEP: Angelina County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. **Project Description**

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to *Angelina Beautiful Clean* for the *Cleanup of Illegal Dumpsites* in Angelina County as set forth in an agreement between the Third-Party Recipient and the TCEQ. SEP funds will be used for sponsorship of cleanups throughout Angelina County or participation in the Texas Recycles Day. Cleanup events will collect and properly dispose of illegally dumped waste and collection events will collect and properly dispose or recycle materials. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. Eligible sites will be limited to areas where a responsible party can not be identified and where there is no preexisting obligation to clean up the site by the owner. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

The project area of Angelina County in East Texas is home to Sam Rayburn Lake and the Neches River, which provides valuable recreational opportunities, a safe habitat for wildlife, as well as a choice habitat for differing species of birds. This project will provide for the proper disposal of waste which will help prevent human health concerns and degradation of wildlife habitat that is associated with illegally dumped waste.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. **Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the Agreed Order with the contribution to:

Tony Moline, Executive Director
Angelina Beautiful Clean
1615 S Chestnut
Lufkin, TX 75901

3. **Records and Reporting**

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. **Failure to Fully Perform**

If Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	5-Jan-2009	Screening	13-Jan-2009	EPA Due	
	PCW	14-Jan-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	A-1 Lufkin Rental Center, Inc. dba A-1 Johnny Portable Toilets		
Reg. Ent. Ref. No.	RN103149076		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37011	No. of Violations	2
Docket No.	2009-0112-MLM-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media	Municipal Solid Waste	Enf. Coordinator	Carlie Konkol
		EC's Team	Enforcement Team 3
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 Total Adjustments *Subtotal 5*

Economic Benefit Enhancement* *Subtotal 6*

Total EB Amounts
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 13-Jan-2009

Docket No. 2009-0112-MLM-E

PCW

Respondent A-1 Lufkin Rental Center, Inc. dba A-1 Johnny Portable T

Policy Revision 2 (September 2002)

Case ID No. 37011

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103149076

Media [Statute] Water Quality

Enf. Coordinator Carlie Konkol

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	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%
<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) 0%

>> **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

No adjustment is recommended due to no compliance history.

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

Screening Date 13-Jan-2009	Docket No. 2009-0112-MLM-E	PCW			
Respondent A-1 Lufkin Rental Center, Inc. dba A-1 Johnny Portable Toilets	<small>Policy Revision 2 (September 2002)</small>				
Case ID No. 37011	<small>PCW Revision October 30, 2008</small>				
Reg. Ent. Reference No. RN103149076					
Media [Statute] Water Quality					
Enf. Coordinator Carlie Konkol					
Violation Number 1					
Rule Cite(s)	30 Tex. Admin. Code § 330.15(a) and Tex. Water Code § 26.121(a)				
Violation Description	Failed to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state. Specifically, Foamy Q & A, an acid disinfectant cleaning agent, rinse water and residual waste were discharged onto the ground.				
Base Penalty		\$10,000			
>> Environmental, Property and Human Health Matrix					
OR	Harm				
	Major	Moderate	Minor		
Actual			x	Percent 10%	
Potential					
>> Programmatic Matrix					
			Major	Moderate	Minor
					Percent 0%
Matrix Notes	Human health or the environment have been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or the environment.				
Adjustment					\$9,000
					\$1,000
Violation Events					
Number of Violation Events		1	Number of violation days		69
<i>mark only one with an x</i>	daily				
	weekly				
	monthly				
	quarterly	x			
	semiannual				
	annual				
single event					
					Violation Base Penalty \$1,000
One quarterly event is recommended calculated from the November 5, 2008 investigation date to the January 13, 2009 enforcement screening date.					
Good Faith Efforts to Comply			0.0% Reduction	\$0	
			Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary					
Ordinary					
N/A	x		(mark with x)		
Notes	The Respondent does not meet the good faith criteria for this violation.				
Violation Subtotal					\$1,000
Economic Benefit (EB) for this violation			Statutory Limit Test		
Estimated EB Amount		\$345	Violation Final Penalty Total		\$1,000
This violation Final Assessed Penalty (adjusted for limits)					\$1,000

Economic Benefit Worksheet

Respondent A-1 Lufkin Rental Center, Inc. dba A-1 Johnny Portable Toilets
Case ID No. 37011
Reg. Ent. Reference No. RN103149076
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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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$5,000	5-Nov-2008	31-Oct-2009	0.99	\$16	\$329	\$345
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost to develop and implement preventative measures for the collection and proper disposal of rinse water and residual waste. The Date Required is the investigation date and the Final Date is the expected date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$345

Screening Date 13-Jan-2009	Docket No. 2009-0112-MLM-E	PCW		
Respondent A-1 Lufkin Rental Center, Inc. dba A-1 Johnny Portable Toilets	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 37011	<i>PCW Revision October 30, 2008</i>			
Reg. Ent. Reference No. RN103149076				
Media [Statute] Water Quality				
Enf. Coordinator Carlie Konkol				
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code § 312.142(a) and (d)			
Violation Description	Failed to operate with a valid registration. Specifically, the Respondent's Registration as a Transporter of Municipal Sludge and Similar Wastes expired on August 31, 2008.			
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	0%	
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="checkbox"/>	X	<input type="checkbox"/>	<input type="checkbox"/>
		Percent	10%	
Matrix Notes	100% of the rule requirement was not met.			
Adjustment		\$9,000		
		\$1,000		
Violation Events				
Number of Violation Events		3	Number of violation days	
		78		
<i>mark only one with an x</i>	daily	<input type="checkbox"/>	Violation Base Penalty	
	weekly	<input type="checkbox"/>		
	monthly	X		
	quarterly	<input type="checkbox"/>		
	semiannual	<input type="checkbox"/>		
	annual	<input type="checkbox"/>		
	single event	<input type="checkbox"/>		
Three monthly events are recommended from the August 31, 2008 registration expiration date to the November 17, 2008 compliance date.			\$3,000	
Good Faith Efforts to Comply		25.0% Reduction	\$750	
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>		
Ordinary	X	<input type="checkbox"/>		
N/A	(mark with x)			
Notes	The Respondent achieved compliance November 17, 2008.			
Violation Subtotal		\$2,250		
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount		\$22	Violation Final Penalty Total	
		\$2,250		
		This violation Final Assessed Penalty (adjusted for limits)		
		\$2,250		

Economic Benefit Worksheet

Respondent: A-1 Lufkin Rental Center, Inc. dba A-1 Johnny Portable Toilets
Case ID No. 37011
Reg. Ent. Reference No. RN103149076
Media: Water Quality
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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No commas or \$

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,030	15-Jun-2008	17-Nov-2008	0.42	\$22	n/a	\$22

Notes for DELAYED costs

Estimated costs to submit a renewal registration application. The Date Required is the date the renewal application was due and the Final Date is the date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,030

TOTAL

\$22

Compliance History Report

Customer/Respondent/Owner-Operator: CN601684236 A-1 LUFKIN RENTAL CENTER, INC. Classification: AVERAGE Rating: 3.01
Regulated Entity: RN103149076 A 1 JOHNNY PORTABLE TOILETS Classification: AVERAGE Site Rating: 3.01
BY DEFAULT

ID Number(s): SLUDGE REGISTRATION 21323

Location: 5572 S US HIGHWAY 69, LUFKIN, TX, 75901

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: January 12, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: January 12, 2004 to January 12, 2009

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

Name: Carlie Konkol Phone: (361) 825-3422

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
6. Rating Date: 9/1/2008 Repeat Violator: NO

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.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - 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
A-1 LUFKIN RENTAL
CENTER, INC. DBA A-1 JOHNNY
PORTABLE TOILETS;
RN103149076**

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§
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§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-0112-MLM-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding the A-1 Lufkin Rental Center, Inc. dba A-1 Johnny Portable Toilets ("A-1") under the authority of TEX. WATER CODE chs. 7 and 26, and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and A-1 appear before the Commission and together stipulate that:

1. A-1 owns and operates a portable toilet rental facility located at 5572 South United States Highway 69 in Lufkin, Angelina County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 26 and the TCEQ rules.
3. The Commission and A-1 agree that the Commission has jurisdiction to enter this Agreed Order, and that A-1 is subject to the Commission's jurisdiction.
4. A-1 received notice of the violations alleged in Section II ("Allegations") on or about December 21, 2008.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by A-1 of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of three thousand two hundred fifty dollars (\$3,250.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). A-1 paid one thousand six hundred twenty-five dollars (\$1,625.00) of the administrative penalty. Pursuant to TEX. WATER CODE § 7.067, one thousand six hundred twenty-five dollars (\$1,625.00) of the administrative penalty shall be conditionally offset by A-1's completion of a Supplemental Environmental Project (SEP) as defined in Attachment A, incorporated herein by reference. A-1's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
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 A-1 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 A-1 has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

1. During an investigation conducted on November 5, 2008, a TCEQ Beaumont Regional Office investigator documented that A-1 violated the following requirements:
 - a. 30 TEX. ADMIN. CODE § 330.15(a) and TEX. WATER CODE § 26.121(a) by failing to prevent the unauthorized discharge of a pollutant into or adjacent to water in the state. Specifically, Foamy Q & A, an acid disinfectant cleaning agent, rinse water and residual waste were discharged onto the ground; and

- b. 30 TEX. ADMIN. CODE § 312.142(a) and (d) by failing to operate with a valid registration. Specifically, A-1's registration as a Transporter of Municipal Sludge and Similar Wastes expired on August 31, 2008.
2. A-1 received notice of the violations on or about December 21, 2008.

III. DENIALS

A-1 generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that A-1 pay an administrative penalty as set forth in Section I, Paragraph 6, above. The payment of this administrative penalty and A-1's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here.
2. A-1 shall implement and complete a Supplemental Environmental Project ("SEP") in accordance with TEX. WATER CODE § 7.067 and as set forth in Section I, Paragraph 6, above. One thousand six hundred twenty-five dollars (\$1,625.00) of the assessed administrative penalty shall be offset with the condition that A-1 implement and complete the SEP pursuant to the terms of the SEP as defined in Attachment A, incorporated herein by reference. A-1's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.
3. A-1 shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, A-1 shall cease the unauthorized discharge of all rinse water and residual waste at the Facility;
 - b. Within 30 days after the effective date of this Order, A-1 shall develop and implement measures to prevent the discharge of pollutants and ensure that rinse water and residual waste are properly disposed at an authorized facility; and
 - c. Within 45 days after the effective date of this Order, A-1 shall submit written certification and detailed supporting documentation, including photographs, receipts, and /or other records, to demonstrate compliance with Ordering Provision Nos. 3.a.

and 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.”

A-1 shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Ronald Hebert, Water Section, Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

4. The provisions of this Agreed Order shall apply to and be binding upon A-1. A-1 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.
5. If A-1 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, A-1's failure to comply is not a violation of this Agreed Order. A-1 shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. A-1 shall notify the Executive Director within seven days after A-1 becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. 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 A-1 shall be made in writing to the Executive Director. Extensions are not effective until A-1 receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against A-1 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.
8. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes
9. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of this Agreed Order to A-1 or three days after the date on which the Commission mails notice of this Agreed Order to A-1, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

A-1 Lufkin Rental Center, Inc. dba A-1 Johnny Portable Toilets
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Handwritten Signature]

For the Executive Director

10/16/09
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on A-1's compliance history;
- Greater scrutiny of any permit applications submitted by A-1;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against A-1;
- Automatic referral to the Attorney General's Office of any future enforcement actions against A-1; and
- TCEQ seeking other relief as authorized by law.

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

Joe Howard
Signature

September 18, 2009
Date

JOE A. HOWARD
Name (Printed or Typed)

PRESIDENT
Title

Authorized representative of A-1 Lufkin Rental Center, Inc. dba A-1 Johnny Portable Toilets

Attachment A
Supplemental Environmental Project

Attachment A
Docket Number: 2009-0112-MLM-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondent: A-1 Lufkin Rental Center, Inc. dba A-1 Johnny Portable Toilets

Penalty Amount: Three Thousand Two Hundred Fifty Dollars (\$3,250)

SEP Offset Amount: One Thousand Six Hundred Twenty-Five Dollars (\$1,625)

Type of SEP: Pre-approved

Third-Party Recipient: Angelina Beautiful Clean – *Cleanup of Illegal Dumpsites*

Location of SEP: Angelina County

The Texas Commission on Environmental Quality (“TCEQ”) agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project (“SEP”). The offset is equal to the SEP Offset Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondent shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to *Angelina Beautiful Clean* for the *Cleanup of Illegal Dumpsites* in Angelina County as set forth in an agreement between the Third-Party Recipient and the TCEQ. SEP funds will be used for sponsorship of cleanups throughout Angelina County or participation in the Texas Recycles Day. Cleanup events will collect and properly dispose of illegally dumped waste and collection events will collect and properly dispose or recycle materials. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. Eligible sites will be limited to areas where a responsible party can not be identified and where there is no preexisting obligation to clean up the site by the owner. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

The project area of Angelina County in East Texas is home to Sam Rayburn Lake and the Neches River, which provides valuable recreational opportunities, a safe habitat for wildlife, as well as a choice habitat for differing species of birds. This project will provide for the proper disposal of waste which will help prevent human health concerns and degradation of wildlife habitat that is associated with illegally dumped waste.

C. Minimum Expenditure

The Respondent shall contribute at least the SEP Offset Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the Agreed Order with the contribution to:

Tony Moline, Executive Director
Angelina Beautiful Clean
1615 S Chestnut
Lufkin, TX 75901

3. Records and Reporting

Concurrent with the payment of the SEP Offset Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Offset Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondent does not perform its obligations under this SEP in any way, including full expenditure of the SEP Offset Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Offset Amount.

In the event of incomplete performance, the Respondent shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.