EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0954-WQ-E **TCEQ ID:** RN103858825 **CASE NO.:** 36027

RESPONDENT NAME: GM TRUCKS & EQUIPMENT, INC.

ORDER TYPE:		
X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
__FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__AIR	__MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
X WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
__MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: GM Trucks & Equipment, located on Highway 359, three miles east from Loop 20, Laredo, Webb County

TYPE OF OPERATION: Automobile salvage yard

SMALL BUSINESS: __X__ **Yes** ____ **No**

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

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on December 15, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Steve Villatoro, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4930; Mr. Bryan Sinclair, Enforcement Division, MC 219, (512) 239-2171

Respondent: Mr. Jorge L. Gutierrez, Owner, GM TRUCKS & EQUIPMENT, INC., Rural Route 3, Box 4, Laredo, Texas 78043-9802

Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date(s) of Complaints Relating to this Case:** None **Date of Investigation Relating to this Case:** May 14, 2008 **Date of NOV/NOE Relating to this Case:** May 28, 2008 (NOE) **Background Facts:** This was a routine investigation. **WATER** Failure to maintain authorization to discharge storm water associated with industrial activities. Specifically, the Respondent did not renew the Texas Pollutant Discharge Elimination System ("TPDES") Storm Water Multi-Sector General Permit No. TXR05P185 by December 12, 2006, and is continuing to operate without authorization [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 281.25(a)(4), and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].	**Total Assessed:** $16,200 **Total Deferred:** $3,240 _X_ Expedited Settlement __Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid (Due) to General Revenue:** $368 (remaining $12,592 due in 34 monthly payments of $360 each and one final payment of $352) **Site Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Person Compliance History Classification** __ **High** _X_ **Average** __ **Poor** **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that the Respondent has submitted a Notice of Intent and developed and implemented a storm water pollution prevention plan by June 3, 2008.

Additional ID No(s).: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) — *PCW Revision April 29, 2008*

TCEQ

DATES					
Assigned	3-Jun-2008				
PCW	16-Jun-2008	Screening	11-Jun-2008	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	GM TRUCKS & EQUIPMENT, INC.		
Reg. Ent. Ref. No.	RN103858825		
Facility/Site Region	16-Laredo	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36027	No. of Violations	1
Docket No.	2008-0954-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Steve Villatoro
		EC's Team	Enforcement Team 1

Admin. Penalty $ Limit Minimum $0 Maximum $10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)		*Subtotal 1*	$18,000
ADJUSTMENTS (+/-) TO SUBTOTAL 1			
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.			
Compliance History	0.0% Enhancement	*Subtotals 2, 3, & 7*	$0
Notes	An enhancement is recommended due to one NOV with unrelated violations and reductoin due to voluntary on-site compliance assessment.		
Culpability	No — 0.0% Enhancement	*Subtotal 4*	$0
Notes	The Respondent does not meet the culpability criteria.		
Good Faith Effort to Comply Total Adjustments		*Subtotal 5*	$1,800
Economic Benefit	0.0% Enhancement*	*Subtotal 6*	$0
Total EB Amounts	$148	**Capped at the Total EB $ Amount*	
Approx. Cost of Compliance	$2,000		
SUM OF SUBTOTALS 1-7		*Final Subtotal*	$16,200
OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	*Adjustment*	$0
Reduces or enhances the Final Subtotal by the indicated percentage.			
Notes			
		Final Penalty Amount	$16,200
STATUTORY LIMIT ADJUSTMENT		*Final Assessed Penalty*	$16,200
DEFERRAL	20.0% Reduction	*Adjustment*	-$3,240
Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*			
Notes	Deferral offered for expedited settlement.		
PAYABLE PENALTY			$12,960

Screening Date 11-Jun-2008 **Docket No.** 2008-0954-WQ-E **PCW**

Respondent GM TRUCKS & EQUIPMENT, INC.

Policy Revision 2 (September 2002)

Case ID No. 36027

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN103858825

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

Compliance History Worksheet

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

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (*number of NOVs meeting criteria*)	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		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	Yes	-10%
	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

An enhancement is recommended due to one NOV with unrelated violations and reductoin due to voluntary on-site compliance assessment.

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

Screening Date 11-Jun-2008 **Docket No.** 2008-0954-WQ-E **PCW**

Respondent GM TRUCKS & EQUIPMENT, INC.

Policy Revision 2 (September 2002)

Case ID No. 36027

PCW Revision April 29, 2008

Reg. Ent. Reference No. RN103858825

Media [Statute] Water Quality

Enf. Coordinator Steve Villatoro

Violation Number 1

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

Violation Description Failed to obtain authorization to discharge storm water associated with industrial activities, as documented during an investigation conducted on May 14, 2008.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes: 100% of the rule requirement was not met.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 18 | 538 Number of violation days

mark only one with an x

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $18,000

Eighteen monthly events are recommended from the date following permit expiration (12/12/2006) to the compliance date (6/03/2008).

Good Faith Efforts to Comply

10.0% Reduction $1,800

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		x
N/A		(mark with x)

Notes: The Respondent achieved compliance on June 3, 2008.

Violation Subtotal $16,200

Economic Benefit (EB) for this violation

Estimated EB Amount $148

Statutory Limit Test

Violation Final Penalty Total $16,200

This violation Final Assessed Penalty (adjusted for limits) $16,200

Economic Benefit Worksheet

Respondent GM TRUCKS & EQUIPMENT, INC.
Case ID No. 36027
Reg. Ent. Reference No. RN103858825
Media Water Quality
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Delayed Costs							
Equipment				0.00	$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	$2,000	12-Dec-2006	3-Jun-2008	1.48	$148	n/a	$148
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs: Estimated costs to submit a Notice of Intent letter and implement a Storm Water Pollution Prevention Plan, beginning upon expiration of authorization and ending on 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: $2,000

TOTAL: $148

Compliance History

Customer/Respondent/Owner-Operator:	CN602373417	GM TRUCKS & EQUIPMENT, INC.	Classification: AVERAGE	Rating: 1.!
Regulated Entity:	RN103858825	G M TRUCKS & EQUIPMENT	Classification: AVERAGE	Site Ratin

ID Number(s):

Location: ON HWY 359, 3 MILES EAST FROM LOOP 20, LAREDO, WEBB COUNTY, TX — Rating Date: 9/1/2007 Repeat Violator: N

TCEQ Region: REGION 16 - LAREDO

Date Compliance History Prepared: June 04, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 04, 2003 to June 04, 2008

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

Name: Andrew Hunt Phone: 512-239-1203

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 11/17/2006 (531401)
2 05/28/2008 (671329)

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

Date: 11/17/2006 (531401)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 205, SubChapter A 205.1
Rqmt Prov: PERMIT Part III Sec. A
Description: Failure to properly implement and develop a Storm Water Pollution Prevention Plan (SWP3).

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

06/15/2007

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
GM TRUCKS & EQUIPMENT, INC.	§	
RN103858825	§	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2008-0954-WQ-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 GM TRUCKS & EQUIPMENT, INC. ("the Respondent") under the authority of 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 an automobile salvage yard located on Highway 359, three miles east from Loop 20 in Laredo, Webb County, Texas (the "Facility").

2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.

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 June 2, 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 Sixteen Thousand Two Hundred Dollars ($16,200) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Three Hundred Sixty-Eight Dollars ($368) of the administrative penalty

and Three Thousand Two Hundred Forty Dollars ($3,240) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Twelve Thousand Five Hundred Ninety-Two Dollars ($12,592) of the administrative penalty shall be payable in thirty-four monthly payments of Three Hundred Sixty Dollars ($360) each and one final payment of Three Hundred Fifty-Two Dollars ($352). The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

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 recognizes that the Respondent has submitted a Notice of Intent and developed and implemented a storm water pollution prevention plan by June 3, 2008.

10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.

11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have failed to maintain authorization to discharge storm water associated with industrial activities, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 281.25(a)(4), and 40 CODE OF FEDERAL REGULATIONS § 122.26(c), as documented during an investigation conducted on May 14, 2008. Specifically, the Respondent did not renew the Texas Pollutant Discharge Elimination System ("TPDES") Storm Water

Multi-Sector General Permit No. TXR05P185 by December 12, 2006, and is continuing to operate without authorization.

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: GM TRUCKS & EQUIPMENT, INC., Docket No. 2008-0954-WQ-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

_____ 11/9/2009
For the Executive Director 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.

_____ 9/26/08
Signature Date

Jorge L. Gutierrez Owner
Name (Printed or typed) Title
Authorized Representative of
GM TRUCKS & EQUIPMENT, INC.

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.