

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-1682-SLG-E **TCEQ ID:** RN103154936 **CASE NO.:** 36690

RESPONDENT NAME: Frank Prado dba Prado's Backhoe Service

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"/> IMMEDIATE AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input checked="" type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Prado's Backhoe Service, 101 West County Road 2170, Ricardo, Kleberg County</p> <p>TYPE OF OPERATION: Sludge transporter business</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on July 18, 2008, alleging that the Respondent was discharging septic waste into a pond. 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 April 27, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Evette Alvarado, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2573; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Frank Prado, Owner, Prado's Backhoe Service, P.O. Box 866, Kingsville, Texas 78364 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: July 18, 2008</p> <p>Date of Investigation Relating to this Case: August 13, 2008</p> <p>Date of NOV/NOE Relating to this Case: October 2, 2008 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>1) Failure to submit to the Executive Director a letter describing significant trip ticket discrepancies and attempts to reconcile the discrepancies within 15 days of delivering waste. Specifically, for four trip tickets with significant discrepancies, the Respondent did not submit a letter to the Executive Director as required [30 TEX. ADMIN. CODE § 312.145(c)(2)].</p> <p>2) Failure to submit annual summaries of activities showing: the amounts and types of waste collected; the disposition of such wastes; and the amounts and types of waste delivered to each facility. Specifically, the Respondent did not submit annual summaries in 2007 and 2008 [30 TEX. ADMIN. CODE § 312.145(b)(4)].</p> <p>3) Failure to obtain written approval from the Executive Director to temporarily store waste at a fixed or permanent site. Specifically, the Respondent was storing septic sludge in two unauthorized in-ground holding tanks located within the 100-year flood plain [30 TEX. ADMIN. CODE § 312.147(b)].</p>	<p>Total Assessed: \$8,950</p> <p>Total Deferred: \$1,790 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$500 (remaining \$6,660 due in 15 monthly payments of \$444 each)</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondent has implemented the following corrective measures at the Site:</p> <p>a) By August 30, 2008, properly disposed of the septic sludge stored in two unauthorized in-ground holding tanks;</p> <p>b) By October 9, 2008, submitted Annual Summary Reports for 2007 and 2008; and</p> <p>c) By November 5, 2008, removed the holding tanks from the ground.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a) Within 30 days after the effective date of this Agreed Order, submit a letter describing each significant trip ticket discrepancy, attempts to reconcile the discrepancy, and a copy of the trip ticket; and</p> <p>b) 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 Provision a.</p>

Additional ID No(s): Sludge 23838



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ
DATES

Assigned	13-Oct-2008	Screening	21-Oct-2008	EPA Due	
PCW	16-Jan-2009				

RESPONDENT/FACILITY INFORMATION

Respondent	Frank Prado dba Prado's Backhoe Service		
Reg. Ent. Ref. No.	RN103154936		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	36690	No. of Violations	3
Docket No.	2008-1682-SLG-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Evette Alvarado
		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

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	\$138	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$3,000	

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 21-Oct-2008

Docket No. 2008-1682-SLG-E

PCW

Respondent Frank Prado dba Prado's Backhoe Service

Policy Revision 2 (September 2002)

Case ID No. 36690

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103154936

Media [Statute] Water Quality

Enf. Coordinator Evette Alvarado

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

Enhancement recommended due to one previous NOV for same or similar violations.

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

Screening Date 21-Oct-2008	Docket No. 2008-1682-SLG-E	PCW														
Respondent Frank Prado dba Prado's Backhoe Service		<small>Policy Revision 2 (September 2002)</small>														
Case ID No. 36690		<small>PCW Revision October 30, 2008</small>														
Reg. Ent. Reference No. RN103154936																
Media [Statute] Water Quality																
Enf. Coordinator Evette Alvarado																
Violation Number <input type="text" value="1"/>																
Rule Cite(s)	30 Tex. Admin. Code § 312.145(c)(2)															
Violation Description	Failed to submit to the Executive Director a letter describing significant trip ticket discrepancies and attempts to reconcile the discrepancies within 15 days of delivering waste. Specifically, for four trip tickets with a greater than 15% variation between gallons of waste received and gallons of waste deposited, the Respondent did not submit a letter to the Executive Director as required.															
	Base Penalty	<input type="text" value="\$10,000"/>														
>> Environmental, Property and Human Health Matrix																
	Harm															
	Release Major Moderate Minor															
OR	Actual	<input type="text"/>														
	Potential	<input type="text"/>														
	Percent	<input type="text" value="0%"/>														
>> Programmatic Matrix																
	Falsification	Harm														
	Major Moderate Minor															
	<input type="text"/>	<input type="text"/>														
	x	<input type="text"/>														
	Percent	<input type="text" value="10%"/>														
Matrix Notes	100% of the rule requirement was not met.															
	Adjustment	<input type="text" value="\$9,000"/>														
		<input type="text" value="\$1,000"/>														
Violation Events																
Number of Violation Events	<input type="text" value="4"/>	Number of violation days														
	<input type="text" value="552"/>															
<small>mark only one with an x</small>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>weekly</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input type="text"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td style="text-align: center;">x</td></tr> </table>	daily	<input type="text"/>	weekly	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	x	Violation Base Penalty
daily	<input type="text"/>															
weekly	<input type="text"/>															
monthly	<input type="text"/>															
quarterly	<input type="text"/>															
semiannual	<input type="text"/>															
annual	<input type="text"/>															
single event	x															
		<input type="text" value="\$4,000"/>														
	Four single events are recommended.															
Good Faith Efforts to Comply																
	<input type="text" value="0.0%"/> Reduction	<input type="text" value="\$0"/>														
	Before NOV NOV to EDPRP/Settlement Offer															
Extraordinary	<input type="text"/>	<input type="text"/>														
Ordinary	<input type="text"/>	<input type="text"/>														
N/A	x	(mark with x)														
Notes	The Respondent does not meet the good faith criteria for this violation.															
	Violation Subtotal	<input type="text" value="\$4,000"/>														
Economic Benefit (EB) for this violation																
Statutory Limit Test																
Estimated EB Amount	<input type="text" value="\$10"/>	Violation Final Penalty Total														
		<input type="text" value="\$4,200"/>														
	This violation Final Assessed Penalty (adjusted for limits)															
		<input type="text" value="\$4,200"/>														

Economic Benefit Worksheet

Respondent Frank Prado dba Prado's Backhoe Service
Case ID No. 36690
Reg. Ent. Reference No. RN103154936
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				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System	\$100	18-Apr-2007	4-May-2009	2.05	\$10	n/a	\$10
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

Estimated cost to notify TCEQ of significant trip ticket discrepancies. Date required is the date earliest notification should have been submitted. Final date is 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 \$100

TOTAL \$10

Screening Date 21-Oct-2008	Docket No. 2008-1682-SLG-E	PCW	
Respondent Frank Prado dba Prado's Backhoe Service	<small>Policy Revision 2 (September 2002)</small>		
Case ID No. 36690	<small>PCW Revision October 30, 2008</small>		
Reg. Ent. Reference No. RN103154936			
Media [Statute] Water Quality			
Enf. Coordinator Evette Alvarado			
Violation Number <input type="text" value="2"/>			
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 312.145(b)(4)"/>		
Violation Description	<input type="text" value="Failed to submit annual summaries of activities showing: the amounts and types of waste collected; the disposition of such wastes; and the amounts and types of waste delivered to each facility. Specifically, the Respondent did not submit an annual summary in 2007 and 2008."/>		
Base Penalty		<input type="text" value="\$10,000"/>	
>> Environmental, Property and Human Health Matrix			
OR	Harm		
	Major	Moderate	Minor
Release	<input type="text"/>	<input type="text"/>	<input type="text"/>
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"/>	
			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="\$9,000"/>	
		<input type="text" value="\$1,000"/>	
Violation Events			
Number of Violation Events <input type="text" value="2"/>		Number of violation days <input type="text" value="466"/>	
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$2,000"/>
	weekly	<input type="text"/>	
	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="Two single events are recommended for the two annual summaries that were not submitted in 2007 and 2008."/>			
Good Faith Efforts to Comply		10.0% Reduction <input type="text" value="\$200"/>	
		<small>Before NOV NOV to EDPRP/Settlement Offer</small>	
Extraordinary	<input type="text"/>	<input type="text"/>	
Ordinary	<input type="text"/>	<input type="text" value="x"/>	
N/A	<input type="text"/>	<small>(mark with x)</small>	
Notes	<input type="text" value="The Respondent submitted annual summary reports for 2007 and 2008 by October 9, 2008."/>		
Violation Subtotal		<input type="text" value="\$1,800"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test	
Estimated EB Amount <input type="text" value="\$6"/>	Violation Final Penalty Total		<input type="text" value="\$1,900"/>
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,900"/>	

Economic Benefit Worksheet

Respondent: Frank Prado dba Prado's Backhoe Service
Case ID No. 36690
Reg. Ent. Reference No. RN103154936
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)	\$100	1-Jul-2007	9-Oct-2008	1.28	\$6	n/a	\$6

Notes for DELAYED costs

Estimated cost to prepare and submit two annual summary reports. Date required is the date first report was due. Final date is date reports were received.

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

\$100

TOTAL

\$6

Screening Date 21-Oct-2008	Docket No. 2008-1682-SLG-E	PCW		
Respondent Frank Prado dba Prado's Backhoe Service	<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 36690	<small>PCW Revision October 30, 2008</small>			
Reg. Ent. Reference No. RN103154936				
Media [Statute] Water Quality				
Enf. Coordinator Evette Alvarado				
Violation Number <input type="text" value="3"/>				
Rule Cite(s)	30 Tex. Admin. Code § 312.147(b)			
Violation Description	Failed to obtain written approval from the Executive Director to temporarily store waste at a fixed or permanent site. Specifically, the Respondent was storing septic sludge in two unauthorized in-ground holding tanks located within the 100-year flood plain.			
Base Penalty		<input type="text" value="\$10,000"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input type="text"/>	<input 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 checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>
		Percent	<input type="text" value="10%"/>	
Matrix Notes	100% of the rule requirement was not met.			
		Adjustment	<input type="text" value="\$9,000"/>	
		<input type="text" value="\$1,000"/>		
Violation Events				
Number of Violation Events		<input type="text" value="3"/>	Number of violation days	
		<input type="text" value="69"/>		
<small>mark only one with an x</small>	daily	<input type="text"/>		
	weekly	<input type="text"/>		
	monthly	<input checked="" type="text" value="x"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input type="text"/>		
		Violation Base Penalty	<input type="text" value="\$3,000"/>	
Three monthly events are recommended from the investigation date of August 13, 2008, to the screening date of October 21, 2008.				
Good Faith Efforts to Comply		<input type="text" value="10.0%"/>	Reduction	<input type="text" value="\$300"/>
		Before NOV	NOV to EDPRP/Settlement Offer	
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input checked="" type="text" value="x"/>		
N/A	<input type="text"/>	<input type="text"/>	<small>(mark with x)</small>	
Notes	The Respondent returned to compliance by November 5, 2008.			
		Violation Subtotal	<input type="text" value="\$2,700"/>	
Economic Benefit (EB) for this violation		Statutory Limit Test		
Estimated EB Amount	<input type="text" value="\$122"/>	Violation Final Penalty Total	<input type="text" value="\$2,850"/>	
		This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$2,850"/>		

Economic Benefit Worksheet

Respondent Frank Prado dba Prado's Backhoe Service
Case ID No. 36690
Reg. Ent. Reference No. RN103154936
Media Water Quality
Violation No. 3

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	\$300	17-Dec-2007	30-Aug-2008	0.70	\$11	n/a	\$11
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$2,500	17-Dec-2007	5-Nov-2008	0.89	\$111	n/a	\$111

Notes for DELAYED costs
 Estimated cost to dispose of approximately 1000 gallons of septic sludge (\$100 per 1000 gallons) at a facility authorized to accept such waste, and to remove two holding tanks from the ground. Date required is date of the initial investigation. Final date is the date compliance was achieved.

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 \$2,800

TOTAL \$122

this section.

Self Report? NO

Classification: Major

Citation: 30 TAC Chapter 312, SubChapter G 312.147(b)(6)

Description: Failure to comply with 30 TAC 312.147(b)(6), which states that the storage site shall not be located on land within a designated base flood zone (100-year floodplain).

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 324, SubChapter A 324.4

Description: Failure to prevent the discharge of used oil.

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
FRANK PRADO DBA PRADO'S
BACKHOE SERVICE
RN103154936

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2008-1682-SLG-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 Frank Prado dba Prado's Backhoe Service ("the Respondent") under the authority of TEX. WATER CODE ch. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a sludge transporter business at 101 West County Road 2170 in Ricardo, Kleberg County, Texas (the "Site").
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 October 7, 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 Eight Thousand Nine Hundred Fifty Dollars (\$8,950) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid Five Hundred Dollars (\$500) of the administrative penalty and One Thousand Seven Hundred Ninety Dollars (\$1,790) 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.

The remaining amount of Six Thousand Six Hundred Sixty Dollars (\$6,660) of the administrative penalty shall be payable in 15 monthly payments of Four Hundred Forty-Four Dollars (\$444) each. 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 implemented the following corrective measures at the Site:
 - a. By August 30, 2008, properly disposed of the septic sludge stored in two unauthorized in-ground holding tanks;
 - b. By October 9, 2008, submitted Annual Summary Reports for 2007 and 2008; and
 - c. By November 5, 2008, removed the holding tanks from the ground.
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 Site, the Respondent is alleged to have:

1. Failed to submit to the Executive Director a letter describing significant trip ticket discrepancies and attempts to reconcile the discrepancies within 15 days of delivering waste, in violation of 30 TEX. ADMIN. CODE § 312.145(c)(2), as documented during an investigation conducted on August 13, 2008. Specifically, for four trip tickets with significant discrepancies, the Respondent did not submit a letter to the Executive Director as required.
2. Failed to submit annual summaries of activities showing: the amounts and types of waste collected; the disposition of such wastes; and the amounts and types of waste delivered to each facility, in violation of 30 TEX. ADMIN. CODE § 312.145(b)(4), as documented during an investigation conducted on August 13, 2008. Specifically, the Respondent did not submit annual summaries in 2007 and 2008.
3. Failed to obtain written approval from the Executive Director to temporarily store waste at a fixed or permanent site, in violation of 30 TEX. ADMIN. CODE § 312.147(b), as documented during an investigation conducted on August 13, 2008. Specifically, the Respondent was storing septic sludge in two unauthorized in-ground holding tanks located within the 100-year flood plain.

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: Frank Prado dba Prado's Backhoe Service, Docket No. 2008-1682-SLG-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. Within 30 days after the effective date of this Agreed Order, submit a letter describing each significant trip ticket discrepancy, attempts to reconcile the discrepancy, and a copy of the trip ticket, to the following address:

Permitting and Remediation Support Division
MSW Registration Team, MC 129
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. 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 No. 2.a. 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:

Water Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent.
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.

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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

John Srdlin
For the Executive Director

4/2/2009
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.

John Srdlin
Signature

4-18-09
Date

Frank Prado
Name (Printed or typed)
Authorized Representative of
Frank Prado dba Prado's Backhoe Service

owner
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.