

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2008-0743-MLM-E TCEQ ID: RN105455596 CASE NO.: 35823**

**RESPONDENT NAME: 5D DRILLING & PUMP SERVICE, INC. DBA  
DAVENPORT DRILLING AND PUMP SERVICE**

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<input checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 10293 Farm-to-Market 1560 North, San Antonio, Bexar County</p> <p><b>TYPE OF OPERATION:</b> Water well drilling</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> One complaint was received, alleging improper disposal of industrial and municipal solid waste, and aboveground storage tanks lacking secondary containment. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> The complainant has not indicated 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.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired March 9, 2009. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b></p> <p><b>TCEQ Attorney:</b> Mr. Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019</p> <p><b>TCEQ Enforcement Coordinator:</b> Mr. Thomas Greimel, Enforcement Section, MC 128, (512) 239-5690</p> <p><b>TCEQ Regional Contact:</b> Mr. Joel Anderson, San Antonio Regional Office, MC R-13, (210) 403-4010</p> <p><b>Respondent:</b> Mr. Dean Davenport, President, 5D Drilling &amp; Pump Service, Inc., 111844 Bandera Road, PMB 711, Helotes, Texas 78023</p> <p><b>Respondent's Attorney:</b> Mr. Randall Wilburn, 7408 Rain Creek Parkway, Austin, Texas 78759</p>		

<b>VIOLATION SUMMARY CHART:</b>		
<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p><b>Type of Investigation:</b></p> <p><input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> January 31, 2008</p> <p><b>Date of Investigation Relating to this Case:</b> February 15, 2008</p> <p><b>Date of NOE Relating to this Case:</b> March 21, 2008</p> <p><b>Background Facts:</b> The EDRP was filed July 16, 2008. The Respondent filed an answer and the case was referred to SOAH. The agreed order was signed on January 12, 2009.</p> <p><b>Current Compliance Status:</b> Not yet in compliance.</p> <p><b>MLM:</b></p> <p>1. Failed to notify TCEQ as soon as possible, but not later than 24 hours, after the discovery of the spill or discharge. [30 TEX. ADMIN. CODE § 327.3].</p> <p>2. Failed to immediately abate and contain the spill or discharge and prevent an unauthorized discharge of industrial solid waste [30 TEX. ADMIN. CODE §§ 327.5 and 335.4 and TEX. WATER CODE § 26.121].</p> <p>3. Failed to dispose of municipal solid waste at an approved facility [30 TEX. ADMIN. CODE § 330.15].</p> <p>4. Allowed outdoor burning without authorization from the TCEQ or meeting an exemption to the prohibition [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH &amp; SAFETY CODE § 382.085(b)].</p>	<p><b>Total Assessed:</b> \$11,426</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b> \$331/\$11,095</p> <p>The Respondent paid \$331 of the administrative penalty. The remaining amount of \$11,095 shall be payable in 35 monthly payments of \$317 each.</p> <p><b>Site Compliance History Classification</b> *N/A</p> <p><b>Person Compliance History Classification</b> *N/A</p> <p>*The Respondent has no compliance history ratings because the CN/RN were not in existence prior to September 1, 2007.</p> <p><b>Major Source:</b> ___ Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Immediately: <ol style="list-style-type: none"> <li>a. Cease causing or allowing outdoor burning without first meeting an exception to the prohibition against outdoor burning or receiving authorization from the Commission; and</li> <li>b. Implement a written procedure to report spills or discharges.</li> </ol> </li> <li>2. Within 30 days: <ol style="list-style-type: none"> <li>a. Dispose of all MSW at an authorized MSW facility;</li> <li>b. Submit a registration for the ASTs to TCEQ; and</li> <li>c. Submit an administratively complete Edwards Aquifer AST Facility plan application to TCEQ Edwards Aquifer Protection Program.</li> </ol> </li> <li>3. Within 60 days, submit an Affected Property Assessment Report. If response actions are necessary, comply with requirements of Texas Risk Reduction Program.</li> <li>4. Within 75 days, submit written certification to demonstrate compliance with these Ordering Provisions.</li> </ol>

**VIOLATION SUMMARY CHART:**

<b>VIOLATION INFORMATION</b>	<b>PENALTY CONSIDERATIONS</b>	<b>CORRECTIVE ACTIONS TAKEN/REQUIRED</b>
<p>5. Failed to register with the TCEQ ASTs containing a petroleum product [30 TEX. ADMIN. CODE § 334.127(a).</p> <p>6. Failed to submit and obtain approval of an Edwards Aquifer Protection Plan prior to conducting regulated activities within the Edwards Aquifer Transition Zone [30 TEX. ADMIN. CODE § 213.4(a)(1)].</p>		

**Penalty Calculation Worksheet (PCW)**  
 Policy Revision 2 (September 2002) PCW Revision January 29, 2008

**TCEQ**

DATES	Assigned	24-Mar-2008	Screening	26-Mar-2008	EPA Due	
	PCW	11-Dec-2008				

**RESPONDENT/FACILITY INFORMATION**

Respondent	5D DRILLING AND PUMP SERVICE, INC. dba Davenport Drilling and Pump Service		
Reg. Ent. Ref. No.	RN105455596		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

**CASE INFORMATION**

Enf./Case ID No.	35823	No. of Violations	6
Docket No.	2008-0743-MLM-E	Order Type	1660
Media Program(s)	Industrial and Hazardous Waste	Enf. Coordinator	Thomas Greimel
Multi-Media	Air, Edwards Aquifer, MSW, PST	EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

**Penalty Calculation Section**

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$11,000</b>
---	-------------------	-----------------

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**  
 Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** 0% Enhancement **Subtotals 2, 3, & 7** **\$0**

Notes: No adjustment for compliance history.

**Culpability** No 0% Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply** 0% Reduction **Subtotal 5** **\$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.

**0% Enhancement\*** **Subtotal 6** **\$0**

Total EB Amounts: \$782  
 Approx. Cost of Compliance: \$9,400  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$11,000**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **2%** **Adjustment** **\$426**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with Violation Nos. 1 and 4.

**Final Penalty Amount** **\$11,426**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$11,426**

**DEFERRAL** **0%** Reduction **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

**PAYABLE PENALTY** **\$11,426**

Screening Date 26-Mar-2008

Docket No. 2008-0743-MLM-E

PCW

Respondent 5D DRILLING AND PUMP SERVICE, INC. dba Davenport

Policy Revision 2 (September 2002)

Case ID No. 35823

PCW Revision January 29, 2008

Reg. Ent. Reference No. RN105455596

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Thomas Greimel

### 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	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) 0%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance history.

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

**Screening Date** 26-Mar-2008 **Docket No.** 2008-0743-MLM-E **PCW**  
**Respondent** 5D DRILLING AND PUMP SERVICE, INC. dba Davenport Drilling *Policy Revision 2 (September 2002)*  
**Case ID No.** 35823 *PCW Revision January 29, 2008*  
**Reg. Ent. Reference No.** RN105455596  
**Media [Statute]** Industrial and Hazardous Waste  
**Enf. Coordinator** Thomas Greimel  
**Violation Number** 1  
**Rule Cite(s)** 30 Tex. Admin. Code § 327.3  
**Violation Description** Failed to notify the agency as soon as possible but not later than 24 hours after the discovery of the spill or discharge. Specifically, the Respondent did not report a discharge of rainwater contaminated with used oil to soil.  
**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
		x			10%

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

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 1 Number of violation days 1

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$1,000

One single event is recommended based on the documentation of the violation during the February 15, 2008 investigation.

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$100

**Violation Final Penalty Total** \$1,039

**This violation Final Assessed Penalty (adjusted for limits)** \$1,039

### Economic Benefit Worksheet

Respondent 5D DRILLING AND PUMP SERVICE, INC. dba Davenport Drilling and Pump Service

Case ID No. 35823

Reg. Ent. Reference No. RN105455596

Media Industrial and Hazardous Waste

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
------------------	-----------	---------------	------------	-----	----------------	---------------	-----------

No commas or \$

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)	\$100	2-Jul-2007	3-Jul-2007	0.0	\$0	\$100	\$100

Notes for AVOIDED costs

Estimated cost to report a release to the agency. Date Required is the release date. Final Date is the date the report was due.

Approx. Cost of Compliance

\$100

TOTAL

\$100

<b>Screening Date</b> 26-Mar-2008	<b>Docket No.</b> 2008-0743-MLM-E	<b>PCW</b>
<b>Respondent</b> 5D DRILLING AND PUMP SERVICE, INC. dba Davenport Drilling	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 35823	<i>PCW Revision January 29, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN105455596		
<b>Media [Statute]</b> Industrial and Hazardous Waste		
<b>Enf. Coordinator</b> Thomas Greimel		
<b>Violation Number</b>	2	
<b>Rule Cite(s)</b>	30 Tex. Admin. Code §§ 327.5 and 335.4 and Tex. Water Code § 26.121	
<b>Violation Description</b>	Failed to immediately abate and contain the spill or discharge and prevent an unauthorized discharge of industrial solid waste, as documented during an investigation conducted on February 15, 2008. Specifically, the Respondent did not cleanup a spill and allowed a discharge of rainwater contaminated with used oil to soil covering an area of approximately thirty feet by ten feet from a containment structure used for storage of used oil. In addition, several other small areas of discharge of oil to soil were observed near a pallet and adjacent to a paved area which were not prevented, abated, or cleaned up.	
<b>Base Penalty</b>		\$10,000

<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>					
<b>OR</b>		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
	Actual	<input type="checkbox"/>	x	<input type="checkbox"/>	
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Percent</b> <input type="text" value="25%"/>
<b>&gt;&gt; Programmatic Matrix</b>					
	Falsification	Major	Moderate	Minor	<b>Percent</b> <input type="text" value="0%"/>
<b>Matrix Notes</b>	The environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.				
<b>Adjustment</b> <input type="text" value="\$7,500"/>					
<input type="text" value="\$2,500"/>					

<b>Violation Events</b>																
	Number of Violation Events <input type="text" value="2"/>		Number of violation days <input type="text" value="40"/>													
<i>mark only one with an x</i>	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td>daily</td><td><input type="checkbox"/></td></tr> <tr><td>monthly</td><td>x</td></tr> <tr><td>quarterly</td><td><input type="checkbox"/></td></tr> <tr><td>semiannual</td><td><input type="checkbox"/></td></tr> <tr><td>annual</td><td><input type="checkbox"/></td></tr> <tr><td>single event</td><td><input type="checkbox"/></td></tr> </table>	daily	<input type="checkbox"/>	monthly	x	quarterly	<input type="checkbox"/>	semiannual	<input type="checkbox"/>	annual	<input type="checkbox"/>	single event	<input type="checkbox"/>	<b>Violation Base Penalty</b> <input type="text" value="\$5,000"/>		
daily	<input type="checkbox"/>															
monthly	x															
quarterly	<input type="checkbox"/>															
semiannual	<input type="checkbox"/>															
annual	<input type="checkbox"/>															
single event	<input type="checkbox"/>															
Two monthly events are recommended from the February 15, 2008 investigation date to the March 26, 2008 screening date.																

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$119"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$5,194"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$5,194"/>	

## Economic Benefit Worksheet

**Respondent** 5D DRILLING AND PUMP SERVICE, INC. dba Davenport Drilling and Pump Service

**Case ID No.** 35823

**Reg. Ent. Reference No.** RN105455596

**Media** Industrial and Hazardous Waste

**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
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$3,000	15-Feb-2008	30-Nov-2008	0.8	\$119	n/a	\$119
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

**Notes for DELAYED costs**

Estimated cost to assess and remediate contamination at the facility. Date Required is the investigation date. Final Date is the date the Respondent is expected to come into compliance.

**Avoided Costs**

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$3,000

**TOTAL**

\$119

**Screening Date** 26-Mar-2008 **Docket No.** 2008-0743-MLM-E **PCW**  
**Respondent** 5D DRILLING AND PUMP SERVICE, INC. dba Davenport Drilling *Policy Revision 2 (September 2002)*  
**Case ID No.** 35823 *PCW Revision January 29, 2008*  
**Reg. Ent. Reference No.** RN105455596  
**Media [Statute]** Industrial and Hazardous Waste  
**Enf. Coordinator** Thomas Greimel  
**Violation Number**   
**Rule Cite(s)**   
**Violation Description**   
**Base Penalty**

>> **Environmental, Property and Human Health Matrix**

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

>> **Programmatic Matrix**

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

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

mark only one with an x

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input checked="" type="checkbox"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** 5D DRILLING AND PUMP SERVICE, INC. dba Davenport Drilling and Pump Service

**Case ID No.** 35823

**Reg. Ent. Reference No.** RN105455596

**Media** Industrial and Hazardous Waste

**Violation No.** 3

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$700	15-Feb-2008	30-Nov-2008	0.8	\$28	n/a	\$28
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to dispose of MSW. Date Required is the investigation date. Final Date is the date the Respondent is expected to come into compliance.

**Avoided Costs**

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$700

**TOTAL**

\$28

<b>Screening Date</b> 26-Mar-2008	<b>Docket No.</b> 2008-0743-MLM-E	<b>PCW</b>
<b>Respondent</b> 5D DRILLING AND PUMP SERVICE, INC. dba Davenport Drilling	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 35823	<i>PCW Revision January 29, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN105455596		
<b>Media [Statute]</b> Industrial and Hazardous Waste		
<b>Enf. Coordinator</b> Thomas Greimel		
<b>Violation Number</b> <input type="text" value="4"/>		
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 111.201 and Tex. Health &amp; Safety Code § 382.085(b)"/>	
<b>Violation Description</b>	<input type="text" value="Allowed outdoor burning in the State of Texas without authorization from the Commission or meeting an exemption to the prohibition. Specifically, charred remains were observed in three piles, two of which included remains of burned waste."/>	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>

**>> Environmental, Property and Human Health Matrix**

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

**>> Programmatic Matrix**

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

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events        Number of violation days

<i>mark only one with an x</i>	daily	<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**

One single event is recommended based on the documentation of the violation during the February 15, 2008 investigation.

**Economic Benefit (EB) for this violation      Statutory Limit Test**

**Estimated EB Amount**       **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

### Economic Benefit Worksheet

**Respondent** 5D DRILLING AND PUMP SERVICE, INC. dba Davenport Drilling and Pump Service

**Case ID No.** 35823

**Reg. Ent. Reference No.** RN105455596

**Media** Industrial and Hazardous Waste

**Violation No.** 4

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$200	15-Feb-2008	30-Nov-2008	0.8	\$8	n/a	\$8

Notes for DELAYED costs

Estimated cost to properly dispose of remnants of the burned waste. Date Required is the investigation date. Final Date is the date the Respondent is expected to come into compliance.

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Avoided Costs</b>							
<b>ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)</b>							
Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$300	15-Feb-2008	30-Nov-2008	1.7	\$26	\$300	\$326
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to properly dispose of the waste before before it was burned. Date Required is the investigation date. Final Date is the date the Respondent is expected to come into compliance.

Approx. Cost of Compliance

\$500	<b>TOTAL</b>	\$334
-------	--------------	-------

<b>Screening Date</b> 26-Mar-2008	<b>Docket No.</b> 2008-0743-MLM-E	<b>PCW</b>
<b>Respondent</b> 5D DRILLING AND PUMP SERVICE, INC. dba Davenport Drilling	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 35823	<i>PCW Revision January 29, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN105455596		
<b>Media [Statute]</b> Industrial and Hazardous Waste		
<b>Enf. Coordinator</b> Thomas Greimel		
<b>Violation Number</b> <input type="text" value="5"/>		
<b>Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 334.127(a)"/>	
<b>Violation Description</b>	<input type="text" value="Failed to register aboveground storage tanks (ASTs) containing a petroleum product with the agency. Specifically, two ASTs with capacities of 2,000 and 3,000 gallons containing diesel fuel were not registered with the agency."/>	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>	<b>Harm</b>				
	<b>Release</b>	Major	Moderate		Minor
	<b>Actual</b>	<input type="text"/>	<input type="text"/>		<input type="text"/>
	<b>Potential</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				<b>Percent</b> <input type="text" value="0%"/>	

**>> Programmatic Matrix**

	<b>Falsification</b>				
		Major	Moderate		Minor
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>		<input type="text"/>
				<b>Percent</b> <input type="text" value="10%"/>	
<b>Matrix Notes</b>	<input type="text" value="100% of the rule requirement was not met."/>				
				<b>Adjustment</b> <input type="text" value="\$9,000"/>	

**Violation Events**

<b>Number of Violation Events</b> <input type="text" value="1"/>	<input type="text" value="40"/>	<b>Number of violation days</b>												
<i>mark only one with an x</i>	<table border="1" style="width:100%; border-collapse: collapse;"> <tr><td>daily</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;"><input checked="" type="checkbox"/></td></tr> </table>	daily	<input type="text"/>	monthly	<input type="text"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input checked="" type="checkbox"/>	<b>Violation Base Penalty</b> <input type="text" value="\$1,000"/>
daily	<input type="text"/>													
monthly	<input type="text"/>													
quarterly	<input type="text"/>													
semiannual	<input type="text"/>													
annual	<input type="text"/>													
single event	<input checked="" type="checkbox"/>													
<input type="text" value="One single event is recommended based on the documentation of the violation during the February 15, 2008 investigation."/>														

**Economic Benefit (EB) for this violation** **Statutory/Limit Test**

<b>Estimated EB Amount</b> <input type="text" value="\$4"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$1,039"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$1,039"/>	

### Economic Benefit Worksheet

**Respondent** 5D DRILLING AND PUMP SERVICE, INC. dba Davenport Drilling and Pump Service

**Case ID No.** 35823

**Reg. Ent. Reference No.** RN105455596

**Media** Industrial and Hazardous Waste

**Violation No.** 5

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
------------------	-----------	---------------	------------	-----	----------------	----------------	-----------

No commas or \$

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	15-Feb-2008	30-Nov-2008	0.8	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to register two ASTs with the agency. Date Required is the investigation date. Final Date is the date the Respondent is expected to come into compliance.

**Avoided Costs**

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$100

TOTAL

\$4

<b>Screening Date</b> 26-Mar-2008	<b>Docket No.</b> 2008-0743-MLM-E	<b>PCW</b>
<b>Respondent</b> 5D DRILLING AND PUMP SERVICE, INC. dba Davenport Drilling	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 35823	<i>PCW Revision January 29, 2008</i>	
<b>Reg. Ent. Reference No.</b> RN105455596		
<b>Media [Statute]</b> Industrial and Hazardous Waste		
<b>Enf. Coordinator</b> Thomas Greimel		
<b>Violation Number</b> <input type="text" value="6"/>		
<b>Rule Cite(s)</b>	30 Tex. Admin. Code § 213.4(a)(1)	
<b>Violation Description</b>	Failed to submit and obtain approval of an Edwards Aquifer Protection Plan prior to conducting regulated activities within the Edwards Aquifer Transition Zone. Specifically, two ASTs were installed without an approved AST Facility plan.	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>	<b>Harm</b>				
		Major	Moderate		Minor
	<b>Release</b>	<input type="text"/>	<input type="text"/>		<input type="text"/>
	<b>Actual</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	<b>Potential</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
				<b>Percent</b> <input type="text" value="0%"/>	

**>> Programmatic Matrix**

		Major	Moderate	Minor	
	<b>Falsification</b>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
		<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	
					<b>Percent</b> <input type="text" value="10%"/>
<b>Matrix Notes</b>	100% of the rule requirement was not met.				

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	monthly	<input type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
single event	<input type="text"/>	

**Violation Base Penalty**

Two monthly events are recommended from the February 15, 2008 investigation date to the March 26, 2008 screening date.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$198"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$2,077"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$2,077"/>	

### Economic Benefit Worksheet

**Respondent** 5D DRILLING AND PUMP SERVICE, INC. dba Davenport Drilling and Pump Service

**Case ID No.** 35823

**Reg. Ent. Reference No.** RN105455596

**Media** Industrial and Hazardous Waste

**Violation No.** 6

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs	\$5,000	15-Feb-2008	30-Nov-2008	0.8	\$198	n/a	\$198
Other (as needed)				0.0	\$0	n/a	\$0

**Notes for DELAYED costs**

The delayed costs include the amount to prepare, submit, and receive approval of an Edwards Aquifer Protection Plan. The Date Required is the date of the investigation. The Final Date is the estimated date of compliance.

**Avoided Costs**

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

**Notes for AVOIDED costs**

**Approx. Cost of Compliance**

\$5,000

**TOTAL**

\$198

# Compliance History

Customer/Respondent/Owner-Operator: CN602742983 5D DRILLING & PUMP SERVICE, INC. Classification: Rating:  
Regulated Entity: RN105455596 DAVENPORT DRILLING AND PUMP SERVICE Classification: Site Rating:  
ID Number(s): EDWARDS AQUIFER REGISTRATION 13-08021501  
INDUSTRIAL AND HAZARDOUS WASTE ID NUMBER F1999  
GENERATION  
Location: 10293 FM 1560 N, SAN ANTONIO, TX, 78254  
TCEQ Region: REGION 13 - SAN ANTONIO  
Date Compliance History Prepared: April 29, 2008  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: April 29, 2003 to April 29, 2008

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

Name: Thomas Greimel Phone: (512) 239-5690

## 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 03/21/2008 (637598)  
N/A
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
  - 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  
5D DRILLING & PUMP SERVICE,  
INC. DBA DAVENPORT  
DRILLING AND PUMP SERVICE,  
RN105455596**

§  
§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2008-0743-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 5D Drilling & Pump Service, Inc. dba Davenport Drilling and Pump Service ("5D Drilling") under the authority of TEX. WATER CODE chs. 7 and 26, and TEX. HEALTH & SAFETY CODE chs. 361 and 382. The Executive Director of the TCEQ, represented by the Litigation Division, and 5D Drilling, represented by Randall B. Wilburn, Attorney at Law, appear before the Commission and together stipulate that:

1. 5D Drilling owns and operates a water well drilling operation located at 10293 Farm-to-Market 1560 North, in San Antonio, Bexar County, Texas (the "Site").
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 chs. 361 and 382, TEX. WATER CODE ch. 26, and TCEQ rules.
3. The Commission and 5D Drilling agree that the Commission has jurisdiction to enter this Agreed Order, and that 5D Drilling is subject to the Commission's jurisdiction.
4. 5D Drilling received notice of the violations alleged in Section II ("Allegations") on or about March 26, 2008

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by 5D Drilling of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of eleven thousand four hundred twenty-six dollars (\$11,426.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). 5D Drilling has paid three hundred thirty-one dollars (\$331.00) of the administrative penalty. The remaining amount of eleven thousand ninety-five dollars (\$11,095.00) of the administrative penalty shall be payable in 35 monthly payments of three hundred seventeen dollars (\$317.00) each, pursuant to 30 TEX. ADMIN. CODE § 70.9(a). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If 5D Drilling fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his 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, 5D Drilling's failure to meet the payment schedule of this Agreed Order constitutes the failure by 5D Drilling to timely and satisfactorily comply with all of 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 5D Drilling have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that 5D Drilling 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 February 15, 2008, TCEQ San Antonio Regional Office investigators documented that 5D Drilling violated:
  - a. 30 TEX. ADMIN. CODE § 327.3, by failing to notify TCEQ as soon as possible, but not later than 24 hours after the discovery of the spill or discharge. Specifically, 5D Drilling did not report a discharge of rainwater contaminated with used oil to soil.
  - b. 30 TEX. ADMIN. CODE §§ 327.5 and 335.4 and TEX. WATER CODE § 26.121, by failing to immediately abate and contain the spill or discharge and prevent an unauthorized discharge of industrial solid waste. Specifically, 5D Drilling did not cleanup a spill and allowed a discharge of rainwater contaminated with used oil to soil covering an area of approximately thirty feet by ten feet from a containment structure used for storage of used oil. In addition, several other small areas of discharge of oil to soil were observed near a pallet and adjacent to a paved area which were not prevented, abated, or cleaned up.
  - c. 30 TEX. ADMIN. CODE § 330.15, by failing to dispose of municipal solid waste (MSW) at an approved facility. Specifically, less than 100 cubic yards of MSW, including a cable spool, wooden pallets, a railroad tie, and eight vehicles, were discarded and not disposed of at an authorized facility.
  - d. 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b), by allowing outdoor burning without authorization from the TCEQ or meeting an exemption to the prohibition. Specifically, charred remains were observed in three piles, two of which included remains of burned waste.
  - e. 30 TEX. ADMIN. CODE § 334.127(a), by failing to register with the TCEQ ASTs containing a petroleum product. Specifically, two ASTs with capacities of 2,000 and 3,000 gallons containing diesel fuel were not registered with TCEQ.
  - f. 30 TEX. ADMIN. CODE § 213.4(a)(1), by failing to submit and obtain approval of an Edwards Aquifer Protection Plan prior to conducting regulated activities within the Edwards Aquifer Transition Zone. Specifically, two ASTs were installed without an approved AST Facility Plan.

## III. DENIALS

5D Drilling generally denies each allegation in Section II ("Allegations").

#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that 5D Drilling pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and 5D Drilling'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. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: 5D Drilling & Pump Service, Inc. dba Davenport Drilling and Pump Service, Docket No. 2008-0743-MLM-E" to:

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

2. 5D Drilling shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, 5D Drilling shall:
    - i. Cease causing or allowing outdoor burning without first meeting an exception to the prohibition against outdoor burning or receiving authorization from the Commission, in accordance with 30 TEX. ADMIN. CODE § 111.201 through 111.221; and
    - ii. Implement a written procedure to report spills or discharges, in accordance with 30 TEX. ADMIN. CODE ch. 327.
  - b. Within 30 days after the effective date of this Agreed Order, 5D Drilling shall:
    - i. Dispose of all MSW, as defined in 30 TEX. ADMIN. CODE § 330.3(88), at an authorized MSW facility, in accordance with 30 TEX. ADMIN. CODE § 330.15.

- ii. Submit a registration for the ASTs, in accordance with 30 TEX. ADMIN. CODE § 334.127 to:

Permitting and Reporting Sections  
Permitting & Remediation Support Division, MC 138  
Texas Commission on Environmental Quality  
P. O. Box 13087  
Austin, Texas 78711-3087

- iii. Submit an administratively complete Edwards Aquifer AST Facility plan application to:

Edward Aquifer Protection Program  
San Antonio Regional Office  
Texas Commission on Environmental Quality  
14250 Judson Road  
San Antonio, Texas 78233-4480

- c. Within 60 days after the effective date of this Agreed Order, 5D Drilling shall submit an Affected Property Assessment Report, pursuant to 30 TEX. ADMIN. CODE § 350.91, to the Executive Director for approval. If response actions are necessary, 5D Drilling shall comply with all applicable requirements of the Texas Risk Reduction Program found in 30 TEX. ADMIN. CODE ch. 350 which may include: plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30 TEX. ADMIN. CODE § 350.33(1)); and Institutional Controls under Subchapter F.
- d. Within 75 days after the effective date of this Agreed Order, 5D Drilling shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 2.a., 2.b., and 2.c. 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.”

5D Drilling 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:

Joel Anderson, Waste Section Manager  
Texas Commission on Environmental Quality  
San Antonio Regional Office  
14250 Judson Road  
San Antonio, Texas 78233-4480

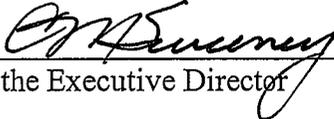
3. The provisions of this Agreed Order shall apply to and be binding upon 5D Drilling. 5D Drilling is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If 5D Drilling fails to comply with any of the Ordering 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, 5D Drilling's failure to comply is not a violation of this Agreed Order. 5D Drilling shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. 5D Drilling shall notify the Executive Director within seven days after 5D Drilling 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 5D Drilling shall be made in writing to the Executive Director. Extensions are not effective until 5D Drilling 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 5D Drilling 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) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to 5D Drilling, or three days after the date on which the Commission mails notice of the Order to 5D Drilling, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
For the Executive Director

2/2/2009  
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, if any, 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, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on 5D Drilling's compliance history;
- Greater scrutiny of any permit applications submitted by 5D Drilling;
- 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 5D Drilling;
- Automatic referral to the Attorney General's Office of any future enforcement actions against 5D Drilling; and
- TCEQ seeking other relief as authorized by law.
- 

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

  
Signature

1/12/09  
Date

Dean Davenport  
Name (Printed or typed)

President  
Title

Authorized representative of  
5D Drilling & Pump Service, Inc.  
dba Davenport Drilling and Pump Service