

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
DOCKET NO.: 2009-0414-WQ-E **TCEQ ID:** RN105471155 **CASE NO.:** 37343
RESPONDENT NAME: WRL General Contractors, Ltd.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input 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 checked="" type="checkbox"/> WATER QUALITY	<input 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: 2008 Building Additions, 3001 University Boulevard, Tyler, Smith County</p> <p>TYPE OF OPERATION: Construction site</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on September 9, 2008, alleging that sediment from the construction site was leaving the property and filling a privately owned sediment retention 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 August 3, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Ms. Lanae Foard, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-2554; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Robert Leavine, President, WRL General Contractors, Ltd., 10858 Farm-to-Market Road 346 West, Flint, Texas 75762 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: September 9, 2008</p> <p>Date of Investigation Relating to this Case: October 7, 2008</p> <p>Date of NOV/NOE Relating to this Case: February 13, 2009 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>Failure to prevent the unauthorized discharge of sediment into or adjacent to water in the state due to the failure to implement/maintain best management practices ("BMPs"). Specifically, the investigator observed silt fences that were overloaded with sediment in several locations, as well as sediment outside the Site, surrounding and completely filling portions of the unnamed tributary of Gilley Creek 1 in the area between the silt fences located downslope of the newly constructed stadium to Callaway Drive [TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit TXR15JY67 Part III, Section F(6)].</p>	<p>Total Assessed: \$11,875</p> <p>Total Deferred: \$2,375 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$9,500</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 by February 18, 2009, the Respondent removed accumulated sediment from the overloaded silt fences and from the unnamed tributary of Gilley Creek 1 in the area between the silt fences located downstream of the newly constructed stadium to Callaway Drive and began maintaining BMPs to prevent excess sediment from discharging off-site.</p>

Additional ID No(s): TXR15JY67



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	16-Mar-2009	Screening	23-Mar-2009	EPA Due	
	PCW	25-Mar-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	WRL General Contractors, Ltd.
Reg. Ent. Ref. No.	RN105471155
Facility/Site Region	5-Tyler
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37343	No. of Violations	1
Docket No.	2009-0414-WQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Lanae Foard
		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	\$12,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$625
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Notes An enhancement is recommended due to one NOV with same/similar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$1,250
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$459
 Approx. Cost of Compliance \$25,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$11,875
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	\$11,875
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$11,875
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DEFERRAL	20.0% Reduction	Adjustment	-\$2,375
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

PAYABLE PENALTY	\$9,500
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Screening Date 23-Mar-2009

Docket No. 2009-0414-WQ-E

PCW

Respondent WRL General Contractors, Ltd.

Policy Revision 2 (September 2002)

Case ID No. 37343

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105471155

Media [Statute] Water Quality

Enf. Coordinator Lanae Foard

Compliance History Worksheet

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

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

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	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

An enhancement is recommended due to one NOV with same/similar violations.

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

Screening Date 23-Mar-2009 **Docket No.** 2009-0414-WQ-E **PCW**
Respondent WRL General Contractors, Ltd. *Policy Revision 2 (September 2002)*
Case ID No. 37343 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105471155
Media [Statute] Water Quality
Enf. Coordinator Lanae Foard

Violation Number 1
Rule Cite(s) Tex. Water Code § 26.121(a), 30 Tex. Admin. Code § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit TXR15JY67 Part III, Section F(6)
Violation Description Failed to prevent the unauthorized discharge of sediment into or adjacent to water in the state due to the failure to implement/maintain best management practices ("BMPs"). Specifically, during the October 7, 2008 investigation, the investigator observed silt fences that were overloaded with sediment in several locations, as well as sediment outside the Site surrounding and completely filling portions of the unnamed tributary of Gilley Creek 1 in the area between the silt fences located downslope of the newly constructed stadium to Calloway Drive.
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes Human health or 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 this violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$12,500

Five monthly events are recommended from the investigation date (October 7, 2008) to the date of compliance (February 18, 2009).

Good Faith Efforts to Comply Reduction **\$1,250**

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

Notes The Respondent came back into compliance on February 18, 2009.

Violation Subtotal \$11,250

Economic Benefit (EB) for this violation **Statutory Limit Test**
Estimated EB Amount \$459 **Violation Final Penalty Total** \$11,875
This violation Final Assessed Penalty (adjusted for limits) \$11,875

Economic Benefit Worksheet

Respondent WRL General Contractors, Ltd.
Case ID No. 37343
Reg. Ent. Reference No. RN105471155
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
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	\$25,000	7-Oct-2008	18-Feb-2009	0.37	\$459	n/a	\$459
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly remove and dispose of sediment from and around the unnamed tributary of Gilley Creek 1, and to install sediment and erosion controls at the Site. Date required is the investigation date. Final date is the date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$25,000

TOTAL

\$459

Compliance History Report

Customer/Respondent/Owner-Operator:	CN602710543	WRL General Contractors, Ltd.	Classification: AVERAGE	Rating: 2.96
Regulated Entity:	RN105471155	2008 BUILDING ADDITIONS	Classification: AVERAGE	Site Rating: 4.00
ID Number(s):	STORMWATER	PERMIT		TXR15JY67
Location:	3001 UNIVERSITY BLVD, TYLER, TX, 75701			
TCEQ Region:	REGION 05 - TYLER			
Date Compliance History Prepared:	April 14, 2009			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	April 14, 2004 to April 14, 2009			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Lanae Foard	Phone:	239 - 2554	

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
 - N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
 - N/A
 - C. Chronic excessive emissions events.
 - N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 01/22/2009 (708272)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 04/23/2008 (653216) CN602710543
 - Self Report? NO Classification: Minor
 - Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
 - TPDES Construction General Permit PERMIT
 - Description: Failure to post the NOI.
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
 - TPDES Construction General PERMIT
 - Description: Failure to remove accumulations of sediment to minimize further negative effects prior to the next rain event.
 - 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
WRL GENERAL CONTRACTORS,
LTD.
RN105471155

§
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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2009-0414-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 WRL General Contractors, Ltd. ("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 operates a construction site at 3001 University Boulevard in Tyler, Smith 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 February 18, 2009.
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 Eleven Thousand Eight Hundred Seventy-Five Dollars (\$11,875) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid Nine Thousand Five Hundred Dollars (\$9,500) of the administrative penalty and Two Thousand Three Hundred Seventy-Five Dollars (\$2,375) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that by February 18, 2009, the Respondent removed accumulated sediment from the overloaded silt fences and from the unnamed tributary of Gilley Creek 1 in the area between the silt fences located downstream of the newly constructed stadium to Calloway Drive and began maintaining best management practices ("BMPs") to prevent excess sediment from discharging off-site.
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 operator of the Site, the Respondent is alleged to have failed to prevent the unauthorized discharge of sediment into or adjacent to water in the state due to the failure to implement/maintain BMPs, in violation of TEX. WATER CODE § 26.121(a), 30 TEX. ADMIN. CODE § 305.125(1), and Texas Pollutant Discharge Elimination System ("TPDES") Construction General Permit TXR15JY67 Part III, Section F(6), as documented during an investigation conducted on October 7, 2008. Specifically, the investigator observed silt fences that were overloaded with sediment in several locations, as well as sediment outside the Site, surrounding and completely filling portions of the unnamed tributary of Gilley Creek 1 in the area between the silt fences located downslope of the newly constructed stadium to Calloway Drive.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

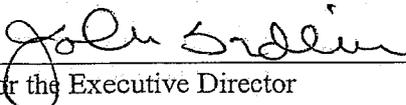
1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations 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: WRL General Contractors, Ltd., Docket No. 2009-0414-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 Site 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 Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes under this Agreed Order.
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



For the Executive Director

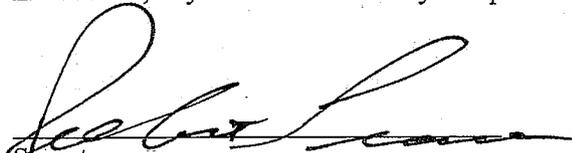
7/13/2009
Date

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.



Signature

5-27-09
Date

ROBERT LEAVINE

Name (Printed or typed)
Authorized Representative of
WRL General Contractors, Ltd.

PRESIDENT

Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.