

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2009-0479-OSS-E TCEQ ID: RN105004303 CASE NO.: 37366
RESPONDENT NAME: TERRY FUESSEL

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 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

SITE WHERE VIOLATION(S) OCCURRED: 1530 County Road 211, Mertzon, Irion County

TYPE OF OPERATION: On-site sewage facility

SMALL BUSINESS: N/A

OTHER SIGNIFICANT MATTERS: A complaint was received alleging that the respondent installed a septic system near Spring Creek. There is no record of additional pending enforcement actions regarding this respondent.

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

COMMENTS RECEIVED: The *Texas Register* comment period expired November 9, 2009. No comments were received.

CONTACTS AND MAILING LIST:
TCEQ Attorney: Mr. Steven M. Fishburn, Litigation Division, MC 175, (512) 239-0635
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
TCEQ Enforcement Coordinator: Ms. Evette Alvarado, Water Enforcement Section, MC 169, (512) 239-2573
TCEQ Regional Contact: Mr. Mark L. Newman, San Angelo Regional Office, MC R-8, (325) 655-9479
Respondent: Mr. Terry Fuessel, 1530 County Road 211, Mertzon, Texas 76941-3925
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: July 24, 2006</p> <p>Date of Investigation Relating to this Case: March 10, 2009</p> <p>Date of NOE Relating to this Case: March 11, 2009</p> <p>Background Facts: The EDPRP was filed May 20, 2009. Settlement was achieved and a signed Agreed Order was received on September 22, 2009.</p> <p>Current Compliance Status: The Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>OSS: Failed to obtain an authorization to construct an on-site sewage facility ("OSSF") [30 TEX. ADMIN. CODE § 285.3(b)(1)].</p>	<p>Total Assessed: \$262</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Paid to General Revenue: \$262</p> <p>The Respondent paid the administrative penalty in full.</p> <p>Site Compliance History Classification N/A</p> <p>Person Compliance History Classification N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 30 days: <ol style="list-style-type: none"> a. Uncover the existing unauthorized OSSF and notify the TCEQ San Angelo Regional Office to allow an on-site follow-up inspection of the existing system; and b. Complete and submit the required OSSF application and application fee to TCEQ. 2. Within 60 days, respond to any requests for additional information and address any deficiencies identified by the TCEQ San Angelo Regional Office. 3. Within 75 days, submit written certification demonstrating compliance



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	15-Mar-2009	Screening	25-Mar-2009	EPA Due	
	PCW	6-Apr-2009				

RESPONDENT/FACILITY INFORMATION

Respondent	Terry Fuessel		
Reg. Ent. Ref. No.	RN105004303		
Facility/Site Region	8-San Angelo	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	37366	No. of Violations	1
Docket No.	2009-0479-OSS-E	Order Type	1660
Media Program(s)	On-Site Sewage Disposal	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Evette Alvarado
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1:	\$250
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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	\$12
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Notes: Enhancement recommended for one NOV with same or similar violations as those in the current action.

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	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$34
 Approx. Cost of Compliance: \$210
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$262
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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	\$262
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$262
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$262
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Screening Date 25-Mar-2009

Docket No. 2009-0479-OSS-E

PCW

Respondent Terry Fuessel

Policy Revision 2 (September 2002)

Case ID No. 37366

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105004303

Media [Statute] On-Site Sewage Disposal

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%

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)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement recommended for one NOV with same or similar violations as those in the current action.

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

Screening Date 25-Mar-2009

Docket No. 2009-0479-OSS-E

PCW

Respondent Terry Fuessel

Policy Revision 2 (September 2002)

Case ID No. 37366

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105004303

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Evette Alvarado

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 285.3(b)(1)

Violation Description

Failed to obtain an authorization to construct an on-site sewage facility (OSSF). Specifically, the Respondent constructed and installed an OSSF on his own property without first obtaining the required authorization, as documented during an investigation conducted on March 10, 2009.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 1

15 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$250

One monthly event is recommended from the investigation date of March 10, 2009, to the screening date of March 25, 2009.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$34

Violation Final Penalty Total \$263

This violation Final Assessed Penalty (adjusted for limits) \$263

Economic Benefit Worksheet

Respondent Terry Fuessel
Case ID No. 37366
Reg. Ent. Reference No. RN105004303
Media On-Site Sewage Disposal
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				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$210	24-Jul-2006	22-Oct-2009	3.25	\$34	n/a	\$34
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit an application for an on-site sewage facility for a single-family dwelling. Date required is the original investigation date. Final date is the expected date of compliance.

Avoided Costs

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

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

Notes for AVOIDED costs

Approx. Cost of Compliance

\$210

TOTAL

\$34

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
TERRY FUESSEL,
RN105004303**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2009-0479-OSS-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 Terry Fuessel ("Mr. Fuessel") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 366. The Executive Director of the TCEQ, represented by the Litigation Division, and Mr. Fuessel appear before the Commission and together stipulate that:

1. Mr. Fuessel owns and operates an on-site sewage facility located at 1530 County Road 211, Mertzon, Irion County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE § 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 7.002 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 366 and the TCEQ rules.
3. The Commission and Mr. Fuessel agree that the Commission has jurisdiction to enter this Agreed Order, and that Mr. Fuessel is subject to the Commission's jurisdiction.
4. Mr. Fuessel received notice of the violations alleged in Section II ("Allegations") on or about March 16, 2009.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Mr. Fuessel of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of two hundred sixty-two dollars (\$262.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Mr. Fuessel paid two hundred sixty-two dollars (\$262.00) of the administrative 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 Mr. Fuessel 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 Mr. Fuessel 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

During a record review conducted on March 10, 2009, a TCEQ San Angelo Regional Office investigator documented that Mr. Fuessel violated 30 TEX. ADMIN. CODE § 285.3(b)(1) by failing to obtain an authorization to construct an on-site sewage facility (OSSF). Specifically, Mr. Fuessel constructed and installed an OSSF on his own property without first obtaining the required authorization.

III. DENIALS

Mr. Fuessel generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Mr. Fuessel pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Mr. Fuessel'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: Terry Fuessel, Docket No. 2009-0479-OSS-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. Mr. Fuessel shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order:
 - i. Uncover the existing unauthorized OSSF and notify the TCEQ San Angelo Regional Office to allow an on-site follow-up inspection of the existing system; and
 - ii. Complete and submit the required OSSF application and application fee to the following address:

Water Section Manager
San Angelo Regional Office
Texas Commission on Environmental Quality
622 S. Oakes, Suite K
San Angelo, Texas 76903-7035
 - b. Within 60 days after the effective date of this Agreed Order, respond to any requests for additional information and address any deficiencies identified by the TCEQ San Angelo Regional Office; and
3. Within 75 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 Nos. 2.a and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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:

Chris Mayben, Water Section Manager
San Angelo Regional Office
Texas Commission on Environmental Quality
622 S. Oakes, Suite K
San Angelo, Texas 76903-7035

4. The provisions of this Agreed Order shall apply to and be binding upon Mr. Fuessel. Mr. Fuessel is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
5. If Mr. Fuessel 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, Mr. Fuessel's failure to comply is not a violation of this Agreed Order. Mr. Fuessel shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Fuessel shall notify the Executive Director within seven days after Mr. Fuessel becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Fuessel shall be made in writing to the Executive Director. Extensions are not effective until Mr. Fuessel receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. This Agreed Order, issued by the Commission, shall not be admissible against Mr. Fuessel in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

9. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Agreed Order to Mr. Fuessel, or three days after the date on which the Commission mails notice of this Agreed Order to Mr. Fuessel, 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

12/14/09

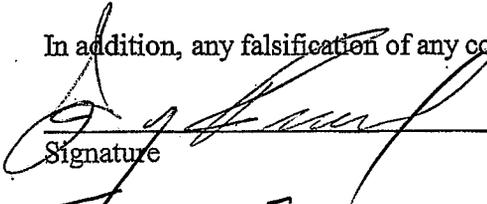
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, 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 Mr. Fuessel's compliance history;
- Greater scrutiny of any permit applications submitted by Mr. Fuessel;
- 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 Mr. Fuessel;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Mr. Fuessel; and
- TCEQ seeking other relief as authorized by law.

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



Signature

9-22-09
Date

Terry Fuessel
Name (Printed or typed)

Title

Authorized representative of
Terry Fuessel