

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-0775-SLG-E TCEQ ID RN105715981 CASE NO. 37680
RESPONDENT NAME: JERICO FOSTER DBA FOSTER SEPTIC

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" 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: 13228 ½ Columbine Lane, Houston, Harris County

TYPE OF OPERATION: Sludge transporter business

SMALL BUSINESS: Yes No N/A

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

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

COMMENTS RECEIVED: The Texas Register comment period expired January 18, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Steven M. Fishburn, Litigation Division, MC 175, (512) 239-3400
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Ms. Evette Alvarado, Water Enforcement Section, MC 169, (512) 239-2573

TCEQ Regional Contact: Mr. Steve Smith, Houston Regional Office, MC R-12, (713) 767-3581

Respondent: Mr. Jerico Foster, Owner, Foster Septic, 13228 ½ Columbine Lane, Houston, Texas 77049

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 type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: April 8, 2009</p> <p>Date of NOE Relating to this Case: April 29, 2009</p> <p>Background Facts: The EDRP was filed on October 8, 2009 and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned. The Respondent failed to answer the EDRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: The Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>SLG:</p> <ol style="list-style-type: none"> Failed to apply for and receive a registration to transport sewage sludge or domestic septage prior to commencing operations [30 TEX. ADMIN. CODE § 312.142(a)]. Failed to equip a vehicle used to transport liquid waste with a site gauge maintained in a manner which can be used to determine whether or not the vehicle is loaded and the approximate capacity [30 TEX. ADMIN. CODE § 312.144(d)]. Failed to maintain a record of each individual collection and deposit [30 TEX. ADMIN. CODE § 312.145(a)]. 	<p>Total Assessed: \$3,500</p> <p>Total Deferred: \$0</p> <p><input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$3,500</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: N/A</p> <p>Person Compliance History Classification: 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>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"> Immediately, cease transporting sludge until the proper transporter registration is obtained. Within 15 days, submit written certification of compliance with Ordering Provision No. 1. Within 30 days, submit an administratively complete Application to Register or Renew Registration as a Transporter of Municipal Sludges or Other Waste. Within 30 days after a proper transporter registration is obtained: <ol style="list-style-type: none"> Install and maintain a site gauge on the vehicle used to transport liquid wastes; and Begin maintaining records of each individual collection and deposit. Within 45 days after a proper transporter registration is obtained, submit written certification demonstrating compliance with Ordering Provisions Nos. 3 and 4.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	19-May-2009			
	PCW	24-Sep-2009	Screening	26-May-2009	EPA Due

RESPONDENT/FACILITY INFORMATION	
Respondent	Jerico Foster dba Foster Septic
Reg. Ent. Ref. No.	RN105715981
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37680	No. of Violations	3
Docket No.	2009-0775-SLG-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Evette Alvarado
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,500
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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	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: No enhancement recommended due to compliance history.

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	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$750	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,500
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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	\$3,500
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,500
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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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	\$3,500
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Screening Date 26-May-2009

Docket No. 2009-0775-SLG-E

PCW

Respondent Jerico Foster dba Foster Septic

Policy Revision 2 (September 2002)

Case ID No. 37680

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105715981

Media [Statute] Water Quality

Enf. Coordinator Evette Alvarado

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	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%
<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)

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

No enhancement recommended due to compliance history.

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

Screening Date 26-May-2009 Docket No. 2009-0775-SLG-E PCW

Respondent Jerico Foster dba Foster Septic

Policy Revision 2 (September 2002)

Case ID No. 37680

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105715981

Media [Statute] Water Quality

Enf. Coordinator Evette Alvarado

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 312.142(a)

Violation Description

Failed to apply for and receive a registration to transport sewage sludge or domestic septage prior to commencing operations, as documented during an investigation conducted on April 8, 2009. Specifically, the Respondent transported a load of domestic septage from a septic tank without having a registration.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential				0%

>> 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 2 48 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,000

Two monthly events are recommended from the date of the investigation (April 8, 2009) to the screening date (May 26, 2009).

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EUPRP/Settlement Offer

\$0

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

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

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$2,000

This violation Final Assessed Penalty (adjusted for limits) \$2,000

Economic Benefit Worksheet

Respondent Jerico Foster dba Foster Septic
Case ID No. 37680
Reg. Ent. Reference No. RN105715981
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				0.00	\$0	n/a	\$0
Permit Costs	\$50	8-Apr-2009	22-Dec-2009	0.71	\$2	n/a	\$2
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to prepare and submit an administratively complete application to register as a transporter of municipal sludges and similar wastes. Cost includes a ten dollar authorization sticker fee. Date required is the date of the investigation. 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 \$50

TOTAL \$2

Screening Date 26-May-2009 **Docket No.** 2009-0775-SLG-E **PCW**
Respondent Jerico Foster dba Foster Septic *Policy Revision 2 (September 2002)*
Case ID No. 37680 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105715981
Media [Statute] Water Quality
Enf. Coordinator Evette Alvarado

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 312.144(d)

Violation Description
 Failed to equip a vehicle used to transport liquid waste with a site gauge maintained in a manner which can be used to determine whether or not the vehicle is loaded and the approximate capacity, as documented during an investigation conducted on April 8, 2009. Specifically, the Respondent's sludge transportation vehicle was not equipped with a site gauge.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				5%
	Potential			x	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0%

Matrix Notes
 Human health or the environment could be exposed to insignificant amounts of pollutants which would not exceed protective levels as a result of this violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1 48 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$500

One single event is recommended.

Good Faith Efforts to Comply 0.0% Reduction \$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 for this violation.

Violation Subtotal \$500

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$25

Violation Final Penalty Total \$500

This violation Final Assessed Penalty (adjusted for limits) \$500

Economic Benefit Worksheet

Respondent Jerico Foster dba Foster Septic

Case ID No. 37680

Reg. Ent. Reference No. RN105715981

Media Water Quality

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment	\$500	8-Apr-2009	22-Dec-2009	0.71	\$1	\$24	\$25
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to equip the sludge transportation vehicle with a site gauge. Date required is the date of the investigation. 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 \$500

TOTAL \$25

Screening Date 26-May-2009 **Docket No.** 2009-0775-SLG-E **PCW**
Respondent Jerico Foster dba Foster Septic *Policy Revision 2 (September 2002)*
Case ID No. 37680 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105715981
Media [Statute] Water Quality
Enf. Coordinator Evette Alvarado

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 312.145(a)

Violation Description Failed to maintain a record of each individual collection and deposit, as documented during an investigation conducted on April 8, 2009. Specifically, the Respondent had no record, in the form of a trip ticket or otherwise, for the waste held in the vehicle at the time of the investigation.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	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 48 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

One single event is recommended for the missing record.

Good Faith Efforts to Comply 0.0% Reduction \$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 for this violation.

Violation Subtotal \$1,000

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

Estimated EB Amount \$7 **Violation Final Penalty Total** \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent Jerico Foster dba Foster Septic
Case ID No. 37680
Reg. Ent. Reference No. RN105715981
Media Water Quality
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$200	8-Apr-2009	22-Dec-2009	0.71	\$7	n/a	\$7
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to obtain the forms necessary to maintain records of each individual collection and deposit. Date required is the date of the investigation. 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 \$200

TOTAL \$7

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
JERICO FOSTER DBA FOSTER
SEPTIC;
RN105715981

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2009-0775-SLG-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Jerico Foster dba Foster Septic ("Mr. Foster").

The Commission makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Mr. Foster owns and operates a sludge transporter business located at 13228 ½ Columbine Lane, Houston, Harris County, Texas (the "Facility").
2. The Facility involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. The Facility discharged waste into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any state water under the Texas Water Code.
3. During an investigation conducted on April 8, 2009, a TCEQ Regional Office investigator documented that Mr. Foster:
 - a. Failed to apply for and receive a registration to transport sewage sludge or domestic septage prior to commencing operations. Specifically, Mr. Foster transported a load of domestic septage from a septic tank without having a registration;

- b. Failed to equip a vehicle used to transport liquid waste with a site gauge maintained in a manner which can be used to determine whether or not the vehicle is loaded and the approximate capacity. Specifically, Mr. Foster's sludge transportation vehicle was not equipped with a site gauge; and
 - c. Failed to maintain a record of each individual collection and deposit. Specifically, Mr. Foster had no record, in the form of a trip ticket or otherwise, for the waste held in the vehicle at the time of the investigation.
4. Mr. Foster received notice of the violations on or about May 4, 2009.
 5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jerico Foster dba Foster Septic" (the "EDPRP") in the TCEQ Chief Clerk's office on October 8, 2009.
 6. By letter dated October 8, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Foster with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Foster received notice of the EDPRP.
 7. More than 20 days have elapsed since Mr. Foster received notice of the EDPRP, provided by the Executive Director. Mr. Foster failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Foster is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Foster failed to apply for and receive a registration to transport sewage sludge or domestic septage prior to commencing operations, in violation of 30 TEX. ADMIN. CODE § 312.142(a).
3. As evidenced by Finding of Fact No. 3.b., Mr. Foster failed to equip a vehicle used to transport liquid waste with a site gauge maintained in a manner which can be used to

determine whether or not the vehicle is loaded and the approximate capacity, in violation of 30 TEX. ADMIN. CODE § 312.144(d).

4. As evidenced by Finding of Fact No. 3.c., Mr. Foster failed to maintain a record of each individual collection and deposit, in violation of 30 TEX. ADMIN. CODE § 312.145(a).
5. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Foster with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
6. As evidenced by Finding of Fact No. 7, Mr. Foster failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Mr. Foster and assess the penalty recommended by the Executive Director.
7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Foster for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
8. An administrative penalty in the amount of three thousand five hundred dollars (\$3,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Foster is assessed an administrative penalty in the amount of three thousand five hundred dollars (\$3,500.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Mr. Foster's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on

Environmental Quality.” The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation “Re: Jerico Foster dba Foster Septic; Docket No. 2009-0775-SLG-E” to:

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

2. Mr. Foster shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Order, Mr. Foster shall cease transporting sludge until the proper transporter registration is obtained, in accordance with 30 TEX. ADMIN. CODE § 312.142.
- b. Within 15 days after the effective date of this Order, Mr. Foster shall submit written certification of compliance with Ordering Provision No. 2.a., in accordance with 2.f. below.
- c. Within 30 days after the effective date of this Order, Mr. Foster shall submit an administratively complete Application to Register or Renew Registration as a Transporter of Municipal Sludges or Other Waste to the following address:

Texas Commission on Environmental Quality
Cashier’s Office (MC 214)
P. O. Box 13088
Austin, Texas 78711-3088

- d. Within 30 days after a proper transporter registration is obtained, Mr. Foster shall:
 - i. Install and maintain a site gauge on the vehicle used to transport liquid wastes, in accordance with 30 TEX. ADMIN. CODE § 312.144; and
 - ii. Begin maintaining records of each individual collection and deposit, in accordance with 30 TEX. ADMIN. CODE § 312.145.
- e. Within 45 days after a proper transporter registration is obtained, Mr. Foster shall submit written certification of compliance with Order Provisions Nos. 2.c.i., 2.d.i., and 2.d.ii, in accordance with Order Provision No. 2.f. below.

- f. The certifications required by Ordering Provisions Nos. 2.b. and 2.e. shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. 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.”

Mr. Foster shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.e. 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:

Mr. Steve Smith, Water Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Ave., Ste. H
Houston, TX 77023-1452

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Mr. Foster. Mr. Foster is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. Foster fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or

other catastrophe, Mr. Foster's failure to comply is not a violation of this Order. Mr. Foster shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Foster shall notify the Executive Director within seven days after Mr. Foster 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 Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Foster shall be made in writing to the Executive Director. Extensions are not effective until Mr. Foster receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Mr. Foster if the Executive Director determines that Mr. Foster has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

Jerico Foster dba Foster Septic
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF STEVEN M. FISHBURN

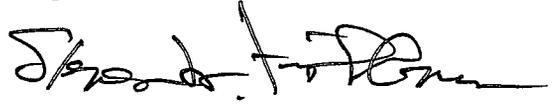
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Steven M. Fishburn. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Jerico Foster dba Foster Septic” (the “EDPRP”) was filed with the Office of the Chief Clerk on October 8, 2009.

The EDPRP was mailed to Mr. Foster at its his last known address on October 8, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Foster received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

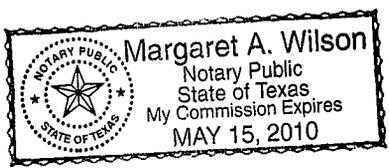
More than 20 days have elapsed since Mr. Foster received notice of the EDPRP. Mr. Foster failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”



Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Steven M. Fishburn, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 20th day of NOVEMBER A.D., 2009.




Notary Signature