

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2010-0068-SLG-E RN105845069 CASE NO. 38989
RESPONDENT NAME: JASON WHATLEY

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: 2930 Glencullen Lane, Pearland, Brazoria County

TYPE OF OPERATION: sludge transporter

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: One complaint was received, alleging that Respondent was operating as a sludge transporter without authorization. There is no record of additional pending enforcement actions regarding this facility location.

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

COMMENTS RECEIVED: The *Texas Register* comment period expired November 8, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Gary K. Shiu, Litigation Division, MC R-12, (713) 422-8916
 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. Jason Whatley, 2930 Glencullen Lane, Pearland, Texas 77584

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: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaint: November 18, 2009</p> <p>Dates of Investigation: November 20, 2009 and November 23, 2009</p> <p>Date of NOE: December 15, 2009</p> <p>Background Facts: The EDPRP was filed on July 21, 2010, and mailed to Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Respondent permanently ceased operations on December 3, 2009.</p> <p>SLG:</p> <ol style="list-style-type: none"> 1. Failed to obtain a sludge transporter registration prior to commencing operations [30 TEX. ADMIN. CODE § 312.142(a)]. 2. Failed to deposit grease trap waste at a facility authorized to receive such wastes [30 TEX. ADMIN. CODE § 312.143 and TEX. WATER CODE § 26.121(a)(2)]. 3. Failed to ensure that waste stored in a mobile closed container is stored for less than four days [30 TEX. ADMIN. CODE § 312.147(a)]. 	<p>Total Assessed: \$2,650</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$2,650</p> <p>This is a Default Order. 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>Compliance History Classifications: Not yet rated - CN and RN were not in existence on September 1, 2009.</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 Respondent ceased transporting and disposing of wastes on December 3, 2009.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	21-Dec-2009	Screening	11-Jan-2010	EPA Due	
	PCW	7-Jun-2010				

RESPONDENT/FACILITY INFORMATION	
Respondent	Jason Whatley
Reg. Ent. Ref. No.	RN105845069
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	38989	No. of Violations	3	
Docket No.	2010-0068-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	\$2,500
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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.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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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	\$150	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$250	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	6.0%	Adjustment	\$150
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Enhancement recommended for the recovery of avoided cost of compliance associated with violation nos. 1 and 2.
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Final Penalty Amount	\$2,650
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,650
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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.
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PAYABLE PENALTY	\$2,650
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Screening Date 11-Jan-2010

Docket No. 2010-0068-SLG-E

PCW

Respondent Jason Whatley

Policy Revision 2 (September 2002)

Case ID No. 38989

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105845069

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	11-Jan-2010	Docket No.	2010-0068-SLG-E	PCW
Respondent	Jason Whatley	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	38989	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.	RN105845069			
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 obtain a sludge transporter registration prior to commencing operations, as documented during an investigation conducted on November 20 and 23, 2009. Specifically, the Respondent transported domestic septage from a septic tank and grease trap waste without authorization.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	Major	Moderate	Minor	
	Actual				
	Potential				
				Percent	0%

>> Programmatic Matrix

	Harm				
	Falsification	Major	Moderate	Minor	
		x			
				Percent	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	14
<i>mark only one with an x</i>	daily		
	weekly		
	monthly	x	
	quarterly		
	semiannual		
	annual		
	single event		
		Violation Base Penalty	\$1,000
One monthly event is recommended from the date of the investigation (November 20, 2009) to the date unauthorized transportation ceased (December 3, 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	No good faith is recommended for default orders.	
	Violation Subtotal	\$1,000

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

Estimated EB Amount	\$50	Violation Final Penalty Total	\$1,060
		This violation Final Assessed Penalty (adjusted for limits)	\$1,060

Economic Benefit Worksheet

Respondent Jason Whatley
Case ID No. 38989
Reg. Ent. Reference No. RN105845069
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				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$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]	\$50	20-Nov-2009	3-Dec-2009	0.00	\$0	\$50	\$50
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost avoided by not registering as a transporter of municipal sludges and similar wastes prior to transporting two loads of waste. Date required is the date of the investigation. Final date is the date both the final load of waste and the portable tank used to transport it were properly disposed of. Delayed costs of disposing of the waste itself are included with violation no. 3.

Approx. Cost of Compliance

\$50

TOTAL

\$50

Screening Date 11-Jan-2010 **Docket No.** 2010-0068-SLG-E **PCW**
Respondent Jason Whatley *Policy Revision 2 (September 2002)*
Case ID No. 38989 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105845069
Media [Statute] Water Quality
Enf. Coordinator Evette Alvarado

Violation Number
Rule Cite(s)
Violation Description
Base Penalty

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

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

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

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

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

Notes

Violation Subtotal

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 Jason Whatley
Case ID No. 38989
Reg. Ent. Reference No. RN105845069
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				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Avoided Costs

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

Disposal				0.00	\$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)	\$100	20-Nov-2009	23-Nov-2009	0.00	\$0	\$100	\$100

Notes for AVOIDED costs

Estimated costs avoided by disposing of grease trap waste at an unauthorized site (estimate of 300 gallons at \$100 dollars per 1000 gallons). Date required is the beginning date of the investigation. Final date is the ending date of the investigation.

Approx. Cost of Compliance

\$100

TOTAL

\$100

Screening Date	11-Jan-2010	Docket No.	2010-0068-SLG-E	PCW
Respondent	Jason Whatley	<i>Policy Revision 2 (September 2002)</i>		
Case ID No.	38989	<i>PCW Revision October 30, 2008</i>		
Reg. Ent. Reference No.	RN105845069			
Media [Statute]	Water Quality			
Enf. Coordinator	Evette Alvarado			
Violation Number	3			
Rule Cite(s)	30 Tex. Admin. Code § 312.147(a)			
Violation Description	Failed to ensure that waste stored in a mobile closed container is stored for less than four days, as documented during an investigation conducted on November 20 and 23, 2009. Specifically, at the time of the investigation, the Respondent had been storing a load of domestic septage from a septic tank for approximately three weeks.			
Base Penalty	\$10,000			

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
					Percent 0%
Matrix Notes	Human health or the environment will or could be exposed to insignificant amounts of pollutants as a result of this violation.				
	Adjustment				\$9,500

\$500

Violation Events

	1	52	Number of violation days	
<i>mark only one with an x</i>	daily			
	weekly			
	monthly			
	quarterly			
	semiannual			
	annual			
	single event	x		
	One single event is recommended.			Violation Base Penalty \$500

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	No good faith is recommended for default orders.		
	Violation Subtotal		\$500

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

Estimated EB Amount	\$0	Violation Final Penalty Total	\$530
This violation Final Assessed Penalty (adjusted for limits)		\$530	

Economic Benefit Worksheet

Respondent Jason Whatley
Case ID No. 38989
Reg. Ent. Reference No. RN105845069
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				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$100	20-Nov-2009	3-Dec-2009	0.04	\$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 properly dispose of 300 gallons of domestic septage from a septic tank (at \$100 per 1000 gallons). Date required is the date of the investigation. 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

\$100

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator: CN603592171 WHATLEY, JASON Classification: Rating:
Regulated Entity: RN105845069 JASON WHATLEY Classification: Site Rating:
ID Number(s):
Location: 2930 GLENCULLEN LN, PEARLAND, TX, 77584
TCEQ Region: REGION 12 - HOUSTON
Date Compliance History Prepared: January 25, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 25, 2005 to January 25, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Evette Alvarado Phone: 512 - 239 - 2573

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

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.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - 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
JASON WHATLEY;
RN105845069**

§
§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2010-0068-SLG-E**

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary 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 Jason Whatley ("Respondent").

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

FINDINGS OF FACT

1. Respondent operated a sludge transporter business at 2930 Glencullen Lane, Pearland, Brazoria County, Texas (the "Business").
2. The Business involved the management and/or disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. Respondent discharged waste into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
3. During an investigation conducted on November 20, 2009, and November 23, 2009, a TCEQ Houston Regional Office investigator documented that Respondent:
 - a. Failed to obtain a transporter registration prior to commencing operations;
 - b. Failed to deposit grease trap waste at a facility authorized to receive such wastes; and
 - c. Failed to ensure that waste stored in a mobile closed container is stored for less than four days.
4. Respondent received notice of the violations on or about December 20, 2009.
5. The Executive Director recognizes that Respondent ceased operations on December 3, 2009.
6. 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 Jason Whatley" (the "EDPRP") in the TCEQ Chief Clerk's office on July 21, 2010.

7. By letter dated July 21, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
8. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent 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 Findings of Fact Nos. 1 and 2, Respondent 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., Respondent failed to obtain a sludge transporter registration prior to commencing operations, in violation of 30 TEX. ADMIN. CODE § 312.142(a).
3. As evidenced by Finding of Fact No. 3.b., Respondent failed to deposit grease trap waste at a facility authorized to receive such wastes, in violation of 30 TEX. ADMIN. CODE § 312.143 and TEX. WATER CODE § 26.121(a)(2).
4. As evidenced by Finding of Fact No. 3.c., Respondent failed to ensure that waste stored in a mobile closed container is stored for less than four days, in violation of 30 TEX. ADMIN. CODE § 312.147(a).
5. As evidenced by Findings of Fact Nos. 6 and 7, the Executive Director timely served Respondent 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. 8, Respondent failed to file a timely answer 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 Respondent 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 Respondent 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 two thousand six hundred fifty dollars (\$2,650.00) 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. Respondent is assessed an administrative penalty in the amount of two thousand six hundred fifty dollars (\$2,650.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent'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.
2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Jason Whatley; Docket No. 2010-0068-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

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Respondent. Respondent 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 Respondent 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent 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 Respondent if the Executive Director determines that Respondent 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.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF GARY K. SHIU

STATE OF TEXAS §
 §
COUNTY OF HARRIS §

“My name is Gary K. Shiu. 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 Jason Whatley” (the “EDPRP”) was filed with the Office of the Chief Clerk on July 21, 2010.

The EDPRP was mailed to Respondent at his last known address on July 21, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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



Gary K. Shiu, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Gary K. Shiu, 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 18 day of October, A.D., 2010.



Notary Signature

