

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2009-0938-SLG-E **TCEQ ID:** RN103147559 **CASE NO.:** 37813

RESPONDENT NAME: Leonard D. Olivares dba Olivares Pumping & Septic Tank Cleaning

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 type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Olivares Pumping & Septic Tank Cleaning, 2130 County Road 301, Beeville, Bee County</p> <p>TYPE OF OPERATION: Plumbing/septic tank cleaning facility</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on January 18, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Jeremy Escobar, Enforcement Division, Enforcement Team 3, MC 149, (512) 239-1460; Ms. Cari-Michel La Caille, Enforcement Division, MC 219, (512) 239-1387 Respondent: Mr. Leonard D. Olivares, Owner, Olivares Pumping & Septic Tank Cleaning, P. O. Box 1606, Beeville, Texas 78104 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 type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: May 14, 2009</p> <p>Date of NOV/NOE Relating to this Case: May 28, 2009 (NOE)</p> <p>Background Facts: This was a routine investigation.</p> <p>WASTE</p> <p>1) Failure to include all of the required information on the trip tickets. Specifically, the Respondent did not include the amount of waste disposed of at the disposal site or the volume of the septic tank on the trip tickets [30 TEX. ADMIN. CODE § 312.145(b)(1)].</p> <p>2) Failure to submit an annual summary of activities showing: the amounts and types of waste collected; the disposition of such wastes; and the amounts and types of waste delivered to each facility. Specifically, the Respondent did not submit an annual summary for the June 1, 2007 through May 31, 2008 reporting period by July 1, 2008 [30 TEX. ADMIN. CODE § 312.145(b)(4)].</p>	<p>Total Assessed: \$1,055</p> <p>Total Deferred: \$211 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid (Due) to General Revenue: \$422 (remaining \$422 due in 1 monthly payment of \$422)</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 the Respondent submitted the annual summary report for the reporting period of July 1, 2007 through May 31, 2008 on June 26, 2009.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to, within 45 days after the effective date of this Agreed Order, submit written certification of compliance with 30 TEX. ADMIN. CODE § 312.145 and submit copies of all trip tickets used to document wastes transported for the three previous complete calendar months.</p>

Additional ID No(s): 22487



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision October 30, 2008

DATES	Assigned	1-Jun-2009	Screening	18-Jun-2009	EPA Due	
	PCW	22-Jun-2009				

RESPONDENT/FACILITY INFORMATION	
Respondent	Leonard D. Olivares dba Olivares Pumping & Septic Tank Cleaning
Reg. Ent. Ref. No.	RN103147559
Facility/Site Region	14-Corpus Christi
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	37813	No. of Violations	2
Docket No.	2009-0938-SLG-E	Order Type	1860
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jeremy Escobar
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,100
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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	8.0% Enhancement	Subtotals 2, 3, & 7	\$55
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Notes Enhancement due to one NOV with similar violations to the ones cited in this 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	\$100
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts \$23
 Approx. Cost of Compliance \$500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,055
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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	\$1,055
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,055
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DEFERRAL	20.0% Reduction	Adjustment	-\$211
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Reduces the Final Assessed Penalty by the Indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral offered for expedited settlement.

PAYABLE PENALTY	\$844
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Screening Date 18-Jun-2009

Docket No. 2009-0938-SLG-E

PCW

Respondent Leonard D. Olivares dba Olivares Pumping & Septic Tan

Policy Revision 2 (September 2002)

Case ID No. 37813

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103147559

Media [Statute] Municipal Solid Waste

Enf. Coordinator Jeremy Escobar

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%
<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) 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

Enhancement due to one NOV with similar violations to the ones cited in this action.

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

Screening Date: 18-Jun-2009 **Docket No.:** 2009-0938-SLG-E **PCW**
Respondent: Leonard D. Olivares dba Olivares Pumping & Septic Tank Cleaning *Policy Revision 2 (September 2002)*
Case ID No.: 37813 *PCW Revision October 30, 2008*
Reg. Ent. Reference No.: RN103147559
Media [Statute]: Municipal Solid Waste
Enf. Coordinator: Jeremy Escobar
Violation Number: 1
Rule Cite(s): 30 Tex. Admin. Code §.312.145(b)(1)
Violation Description: Failed to include all of the required information on the trip tickets. Specifically, the Respondent did not include the amount of waste disposed of at the disposal site or the volume of the septic tank on the trip tickets.
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	
					1%

Matrix Notes: 75% of the rule requirement was met. (2 out of 8 requirements)

Adjustment: \$9,900

\$100

Violation Events

Number of Violation Events: 1 35 Number of violation days

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

Violation Base Penalty: \$100

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: \$100

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

Estimated EB Amount: \$10 **Violation Final Penalty Total:** \$105

This violation Final Assessed Penalty (adjusted for limits): \$105

Economic Benefit Worksheet

Respondent: Leonard D. Olivares dba Olivares Pumping & Septic Tank Cleaning
Case ID No.: 37813
Reg. Ent. Reference No.: RN103147559
Media: Municipal Solid Waste
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$250	14-May-2009	14-Mar-2010	0.83	\$10	n/a	\$10
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 develop and implement practices designed to ensure all reporting is properly accomplished. Date required is the date of the investigation and final date is the estimated date of compliance.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
Disposal				0.00	\$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

\$250

TOTAL

\$10

Screening Date	18-Jun-2009	Docket No.	2009-0938-SLG-E	PCW
Respondent	Leonard D. Olivares dba Olivares Pumping & Septic Tank Cleaning			Policy Revision 2 (September 2002)
Case ID No.	37813			PCW Revision October 30, 2008
Reg. Ent. Reference No.	RN103147559			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Jeremy Escobar			
Violation Number	2			
Rule Cite(s)	30 Tex. Admin. Code § 312.145(b)(4)			
Violation Description	<p>Failed to submit an annual summary of activities showing: the amounts and types of waste collected; the disposition of such wastes; and the amounts and types of waste delivered to each facility. Specifically, the Respondent did not submit an annual summary for the June 1, 2007 through May 31, 2008 reporting period.</p>			
	Base Penalty	\$10,000		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Percent	0%		
>> Programmatic Matrix				
	Falsification	Major	Moderate	Minor
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	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	360
mark only one with an x	daily	<input type="checkbox"/>		
	weekly	<input type="checkbox"/>		
	monthly	<input type="checkbox"/>		
	quarterly	<input type="checkbox"/>		
	semiannual	<input type="checkbox"/>		
	annual	<input checked="" type="checkbox"/>		
	single event	<input type="checkbox"/>		
	Violation Base Penalty	\$1,000		
	One annual event is recommended.			
Good Faith Efforts to Comply				
	10.0% Reduction			\$100
	Before NOV	NOV to EDPRP/Settlement Offer		
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>		
Ordinary	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
N/A	<input type="checkbox"/>	(mark with x)		
Notes	The Respondent returned to compliance on June 26, 2009.			
	Violation Subtotal	\$900		
Economic Benefit (EB) for this violation				
	Estimated EB Amount	\$12		Violation Final Penalty Total
				\$950
		This violation Final Assessed Penalty (adjusted for limits)		
		\$950		

Economic Benefit Worksheet

Respondent Leonard D. Olivares dba Olivares Pumping & Septic Tank Cleaning
Case ID No. 37813
Reg. Ent. Reference No. RN103147559
Media Municipal Solid Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$250	1-Jul-2008	26-Jun-2009	0.99	\$12	n/a	\$12
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 prepare and submit the annual-summary report for the period of June 1, 2007 through May 31, 2008. Date required is based on the date the annual summary was due, and final date is the date the report was submitted.

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	\$250	TOTAL	\$12
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Compliance History Report

Customer/Respondent/Owner-Operator: CN601682867 Leonard D. Olivares Classification: AVERAGE Rating: 2.00
 Regulated Entity: RN103147559 OLIVARES PUMPING & SEPTIC TANK CLEANING Classification: AVERAGE Site Rating: 2.00
 ID Number(s): SLUDGE REGISTRATION 22487
 Location: 2130 COUNTY ROAD 301, BEEVILLE, TX, 78102
 TCEQ Region: REGION 14 - CORPUS CHRISTI
 Date Compliance History Prepared: June 24, 2009
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: June 18, 2004 to June 18, 2009
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Jeremy Escobar Phone: 239 - 1460

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/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	03/07/2005	(349883)
2	05/05/2005	(380084)
3	05/28/2009	(745883)

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 03/07/2005 (349883) CN601682867

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 312, SubChapter G 312.145(b)(4)
 Description: Failure to submit to the executive director an annual summary of activities for the previous period of June 1 through May 31, showing the amounts and types of waste collected; disposition of such wastes; and amounts and types of waste delivered to each facility, by June 15.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 312, SubChapter G 312.145(b)(2)
 Description: Failure to retain copies of trip tickets for five (5) years and have readily available for review by commission's staff or be submitted to the executive director upon request.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 312, SubChapter G 312.144(f)
 Description: Failure to prominently mark all discharge valves and ports.

Self Report? NO Classification: Minor
 Citation: 30 TAC Chapter 312, SubChapter G 312.144(a)
 Description: Failure to place the authorization sticker on all vacuum pump trucks, tanks, or containers used for the collection and/or over-the-road transportation of wastes

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
LEONARD D. OLIVARES DBA
OLIVARES PUMPING & SEPTIC
TANK CLEANING
RN103147559**

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**BEFORE THE

TEXAS COMMISSION ON

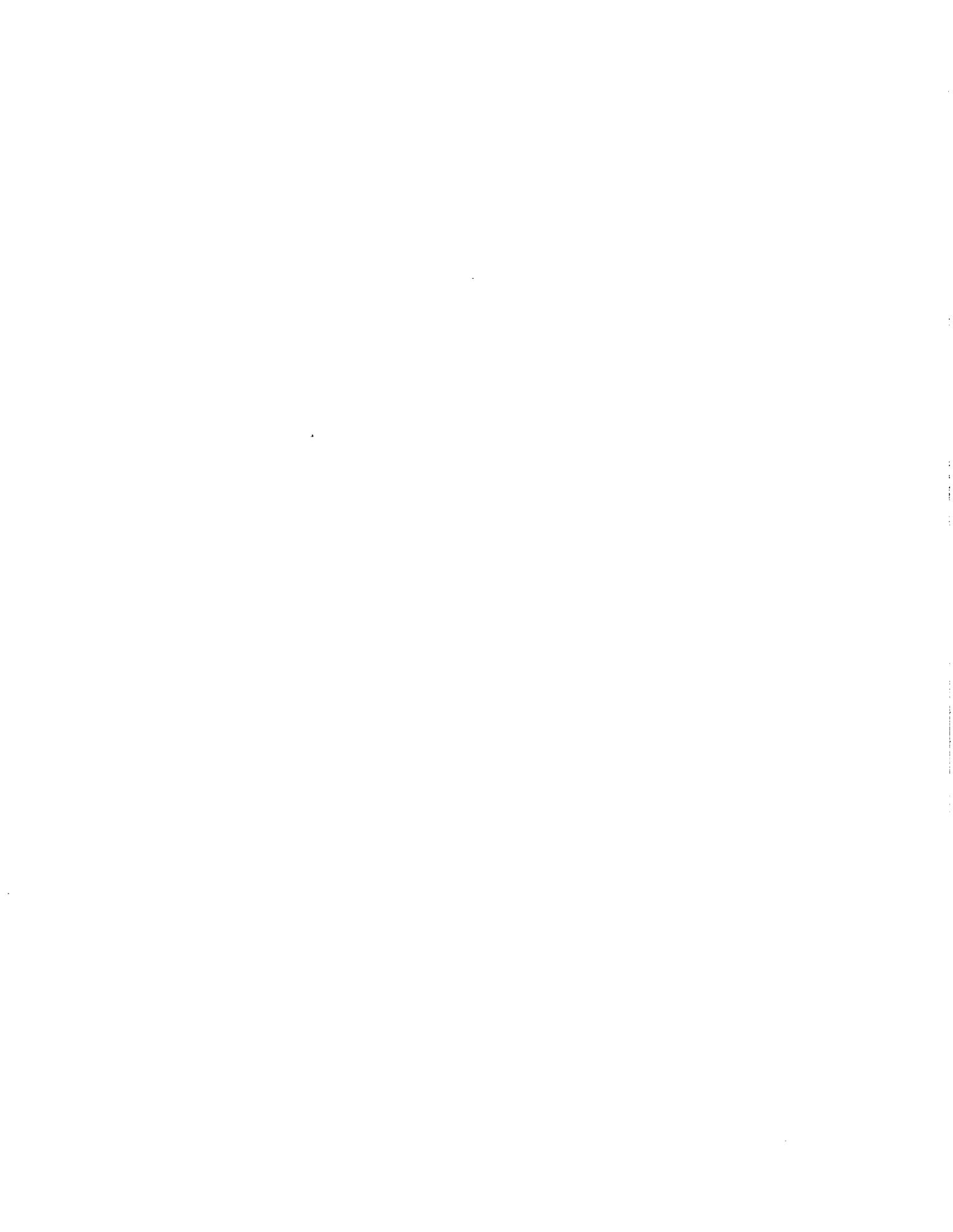
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2009-0938-SLG-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 Leonard D. Olivares dba Olivares Pumping & Septic Tank Cleaning ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates a plumbing/septic tank cleaning facility at 2130 County Road 301 in Beeville, Bee County, Texas (the "Facility")
2. The Respondent involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
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 June 2, 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 One Thousand Fifty-Five Dollars (\$1,055) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Four Hundred Twenty-Two Dollars (\$422) of the administrative penalty and Two Hundred Eleven Dollars (\$211) 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, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty. The remaining amount of Four Hundred Twenty-Two Dollars (\$422) of the administrative penalty shall be payable in one monthly payment. The payment shall be paid within 30 days after the effective date of this Agreed Order. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and 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 the Respondent submitted the annual summary report for the reporting period of July 1, 2007 through May 31, 2008 on June 26, 2009.
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 owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to include all of the required information on the trip tickets, in violation of 30 TEX. ADMIN. CODE § 312.145(b)(1), as documented during an investigation conducted on May 14, 2009. Specifically, the Respondent did not include the amount of waste disposed of at the disposal site or the volume of the septic tank on the trip tickets.

2. Failed to submit an annual summary of activities showing: the amounts and types of waste collected; the disposition of such wastes; and the amounts and types of waste delivered to each facility, in violation of 30 TEX. ADMIN. CODE § 312.145(b)(4), as documented during an investigation conducted on May 14, 2009. Specifically, the Respondent did not submit an annual summary for the June 1, 2007 through May 31, 2008 reporting period by July 1, 2008.

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: Leonard D. Olivares dba Olivares Pumping & Septic Tank Cleaning, Docket No. 2009-0938-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. It is further ordered that the Respondent shall, within 45 days after the effective date of this Agreed Order, submit written certification of compliance with 30 TEX. ADMIN. CODE § 312.145 and submit copies of all trip tickets used to document wastes transported for the three previous complete calendar months. 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 fines 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:

Water Section, Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent.
4. If the Respondent 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against 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.
7. 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.
8. 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

John Grullier
For the Executive Director

12/23/2009
10-31-09
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.

Dann Olivares
Signature

10.31.09
Date

Leonard Danny Olivares
Name (Printed or typed)
Authorized Representative of
Leonard D. Olivares dba Olivares Pumping & Septic Tank Cleaning

Owner
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.

