

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2008-1660-WQ-E TCEQ ID: RN101662617 CASE NO. 36678
RESPONDENT NAME: DOWNSTREAM ENVIRONMENTAL, L.L.C.

ORDER TYPE:		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 3737 Walnut Bend Lane, Houston, Harris County

TYPE OF OPERATION: septic waste disposal facility

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is one additional enforcement action pending against facility location (2009-0862-MSW-E).

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 May 23, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Anna Treadwell, Litigation Division, MC 175, (512) 239-3400
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Enforcement Coordinator: Mr. Jeremy Escobar, Water Enforcement Section, MC R-14, (361) 825-3422

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

Respondent: Ms. Mary Wimbish, Member and CEO, Downstream Environmental, L.L.C., 2222 Bissonnet Street, Suite 103, Houston, Texas 77005

Respondent's Attorney: Ms. Mary Wimbish, Downstream Environmental, L.L.C., 2222 Bissonnet Street, Suite 103, Houston, Texas 77005

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: July 30, 2008</p> <p>Date of NOE Relating to this Case: September 2, 2008</p> <p>Background Facts: The case was referred to the Litigation Division on January 29, 2009. The EDPRP was filed on March 4, 2009. The Respondent filed an answer and the case was referred to SOAH. Settlement was achieved and the agreed order was signed on January 26, 2010.</p> <p>Current Compliance Status: The Respondent has not yet submitted documentation to certify compliance with the technical requirements.</p> <p>WQ: Failed to obtain an appropriate wastewater discharge permit [40 CFR § 122.26(c) and 30 TEX. ADMIN. CODE § 281.25(a)(4)].</p>	<p>Initial Calculated Penalty: \$3,210</p> <p>Total Assessed: \$3,210</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 Paid/Due to General Revenue: \$110/\$3,100</p> <p>The Respondent paid \$110 of the administrative penalty. The remaining amount of \$3,100 shall be payable in 31 monthly payments of \$100 each.</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>Ordering Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 60 days, submit an administratively complete permit application. 2. Respond completely and adequately to all requests for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing. 3. Within 300 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision June 12, 2008

TCEQ

DATES	Assigned	2-Sep-2008			
	PCW	29-Jan-2009	Screening	13-Oct-2008	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Downstream Environmental, L.L.C.				
Reg. Ent. Ref. No.	RN101662617				
Facility/Site Region	12-Houston	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	36678	No. of Violations	1		
Docket No.	2008-1660-WQ-E	Order Type	1660		
Media Program(s)	Water Quality	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** **\$3,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **7.0%** Enhancement **Subtotals 2, 3, & 7** **\$210**

Notes Enhancement is due to one NOV with similar violations, and one NOV with dissimilar violations.

Culpability **0.0%** Enhancement **Subtotal 4** **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5** **\$0**

Economic Benefit **0.0%** Enhancement* **Subtotal 6** **\$0**

Total EB Amounts **\$788** *Capped at the Total EB \$ Amount
 Approx. Cost of Compliance **\$10,000**

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$3,210**

OTHER FACTORS AS JUSTICE MAY REQUIRE **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$3,210**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$3,210**

DEFERRAL **0.0%** Reduction **Adjustment** **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral not offered for non-expedited settlement.

PAYABLE PENALTY **\$3,210**

Screening Date 13-Oct-2008

Docket No. 2008-1660-WQ-E

PCW

Respondent Downstream Environmental, L.L.C.

Policy Revision 2 (September 2002)

Case ID No. 36678

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN101662617

Media [Statute] Water Quality

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	1	2%
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) 7%

>> 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 is due to one NOV with similar violations, and one NOV with dissimilar violations.

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

Screening Date 13-Oct-2008 **Docket No.** 2008-1660-WQ-E **PCW**
Respondent Downstream Environmental, L.L.C. *Policy Revision 2 (September 2002)*
Case ID No. 36678 *PCW Revision June 12, 2008*
Reg. Ent. Reference No. RN101662617
Media [Statute] Water Quality
Enf. Coordinator Jeremy Escobar

Violation Number 1
Rule Cite(s) 40 Code of Federal Reg. § 122.26(c), and 30 Tex. Admin. Code 281.25(a)(4)
Violation Description Failed to obtain an appropriate wastewater discharge permit. Specifically, it was documented that sand and sludge area, the truck wash out area, and the grit basin area were exposed and could have the potential to discharge during a rain event. Due to exposure and contamination on site documented during the investigation, the Facility does not qualify for NEC nor a Multi-Sector General Permit, therefore, an individual industrial permit is required
Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			10%
100% of the rule requirement was not met					
Adjustment \$9,000					

Violation Events

Number of Violation Events: 3 75 Number of violation days
 mark only one with an x
 daily
 monthly
 quarterly
 semiannual
 annual
 single event
Violation Base Penalty \$3,000
 Three monthly events are recommended, calculated from the July 30, 2008 investigation date to the October 13, 2008 screening date.

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 \$3,000		

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

Estimated EB Amount \$788 **Violation Final Penalty Total** \$3,210
This violation Final Assessed Penalty (adjusted for limits) \$3,210

Economic Benefit Worksheet

Respondent Downstream Environmental, L.L.C.
Case ID No. 36678
Reg. Ent. Reference No. RN101662617
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	\$10,000	30-Jul-2008	25-Feb-2010	1.58	\$788	n/a	\$788
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Cost is the estimated cost to obtain an individual industrial wastewater discharge permit. Date required is the investigation date. Final date is the estimated time needed to obtain the permit.

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

\$10,000

TOTAL

\$788

Compliance History

Customer/Respondent/Owner-Operator:	CN600896872	Downstream Environmental, L.L.C.	Classification: AVERAGE	Rating: 2.75
Regulated Entity:	RN101662617	DOWNSTREAM ENVIRONMENTAL LLC	Classification: AVERAGE	Site Rating: 2.75
ID Number(s):	MUNICIPAL SOLID WASTE DISPOSAL	PERMIT		2298
	STORMWATER	PERMIT		TXRNER937
Location:	3737 WALNUT BEND LN, HOUSTON, TX, 77042			
TCEQ Region:	REGION 12 - HOUSTON			
Date Compliance History Prepared:	October 13, 2008			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	October 13, 2003 to October 13, 2008			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Jeremy Escobar Phone: (512) 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 of the site during the compliance period? | No |
| 3. If Yes, who is the current owner? | N/A |
| 4. If Yes, who was/were the prior owner(s)? | N/A |
| 5. When did the change(s) in ownership occur? | N/A |

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, 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.)
12/11/2003 (250516)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- | | | | |
|--------------|--|-----------------|----------|
| Date: | 12/11/2003 (250516) | | |
| Self Report? | NO | Classification: | Moderate |
| Citation: | 30 TAC Chapter 330, SubChapter G 330.150(1) | | |
| Rqmt Prov: | OP Section (F)(2) | | |
| Description: | Downstream Environmental shall comply with the site development plan, and site operating plan required by this chapter shall become operational requirements and shall be considered a part of the operating record of the facility. | | |
| Self Report? | NO | Classification: | Minor |
| Citation: | 30 TAC Chapter 330, SubChapter G 330.157(c) | | |
| Description: | A fire protection plan was established but all employees were not trained in its contents and use. | | |
| Self Report? | NO | Classification: | Minor |
| Citation: | 30 TAC Chapter 330, SubChapter G 330.150(7) | | |
| Description: | The site sign for Downstream Environmental displayed all the required information but the permit number 2298. The sign had the old registration number (43008). The site sign is required to have operating authorization number. | | |
| Self Report? | NO | Classification: | Minor |
| Citation: | 30 TAC Chapter 330, SubChapter G 330.156 | | |
| Rqmt Prov: | OP Section J | | |
| Description: | During the record review, the investigator noted Downstream failed to implement the developed safety plan adapted to the nature of the facility. | | |

Self Report? NO Classification: Minor
Citation: 30 TAC Chapter 330, SubChapter K 330.282(b)
Description: Downstream Environmental shall establish financial assurance for closure of the permitted facility in accordance with Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities).

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter E 330.64(a)
Rqmt Prov: OP Part IV, SOP and Site Development Plan
Description: If during the life of the site, Downstream Environmental becomes aware of any condition in the approved site development plan that necessitates a change to accommodate new technology or improved methods or that makes it impractical to keep the site in compliance.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter G 330.150(3)
Rqmt Prov: OP subsection 4 (a-c)
Description: During the investigation, the investigators requested the documentation for Initial Operation Inspection, Initial Start -up Inspection, and Initial Operation Inspection.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter F 330.114(2)
30 TAC Chapter 330, SubChapter G 330.150(3)
Rqmt Prov: OP sections (a-f)
Description: During the investigation, the investigators requested the documentation for the Internal Lines and Piping, Compartment/Inlet Screen, Inlet Pumps/ Storage Tank/ Process Boiler, Fine Screen/ Centrifuges/ Transfer Pumps, BioReactor/Discharge Station/ Final Water Storage, and Ancillary Equipment.

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter F 330.114(5)
30 TAC Chapter 330, SubChapter G 330.150(3)
Description: Downstream Environmental failed to establish the site procedures for random inspections of incoming loads. The facility did not provide the investigators with procedures and inspections of the program.

Date: 11/15/2007 (598005)

Self Report? NO Classification: Moderate
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)
30 TAC Chapter 281, SubChapter A 281.25(a)(4)
Description: Failure to obtain an appropriate wastewater discharge permit.

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
DOWNSTREAM
ENVIRONMENTAL, L.L.C.
RN101662617**

§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2008-1660-WQ-E**

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Downstream Environmental, L.L.C. (“Downstream Environmental”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Downstream Environmental, appear before the Commission and together stipulate that:

1. Downstream Environmental owns and operates septic waste disposal facility located at 3737 Walnut Bend Lane, Houston, Harris County, Texas (the “Facility”). Downstream Environmental has the potential to discharge waste from the Facility into or adjacent to any water in the state or has committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. WATER CODE ch. 26 and TCEQ rules.
3. The Commission and Downstream Environmental agree that the Commission has jurisdiction to enter this Agreed Order, and that Downstream Environmental is subject to the Commission’s jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Downstream Environmental of any violation alleged in Section II (“Allegations”), nor of any statute or rule.

5. An administrative penalty in the amount of three thousand two hundred ten dollars (\$3,210.00) is assessed by the Commission in settlement of the violations alleged in Section II (“Allegations”). Downstream Environmental paid one hundred ten dollars (\$110.00) of the administrative penalty. The remaining amount of three thousand one hundred dollars (\$3,100.00) of the administrative penalty shall be payable in 31 monthly payments of one hundred dollars (\$100.00) each. The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Downstream Environmental fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Downstream Environmental’s failure to meet the payment schedule of this Agreed Order constitutes the failure by Downstream Environmental to timely and satisfactorily comply with all of the terms of this Agreed Order.
6. 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.
7. The Executive Director of the TCEQ and Downstream Environmental agree on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
8. 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 Downstream Environmental has not complied with one or more of the terms or conditions in this Agreed Order.
9. 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.
10. 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

1. During an investigation conducted on July 30, 2008, a TCEQ Houston Regional Office investigator documented that Downstream Environmental violated 40 CODE OF FEDERAL REGULATIONS § 122.26(c) and 30 TEX. ADMIN. CODE § 281.25(a)(4) by failing to obtain an appropriate wastewater discharge permit. Specifically, it was documented that the sand and sludge area, the truck wash out area, and the grit basin area were exposed and could have the potential to discharge during a rain event. Due to exposure and contamination on site documented during the investigation, the Facility does not qualify for No Exposure

Certificate (“NEC”) nor a Multi-Sector General Permit, therefore, an individual industrial permit is required.

2. Downstream Environmental received notice of the violation on or about September 7, 2008.

III. DENIALS

Downstream Environmental generally denies each allegation in Section II (“Allegations”).

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Downstream Environmental pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and Downstream Environmental’s compliance with all the terms and conditions set forth in this Agreed Order resolve only the Allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to “Texas Commission on Environmental Quality” and shall be sent with the notation “Re: Downstream Environmental, L.L.C., Docket No. 2008-1660-WQ-E” to:

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

2. Downstream Environmental shall undertake the following technical requirements:
 - a. Within 60 days after the effective date of this Agreed Order, Downstream Environmental shall submit an administratively complete permit application in accordance with 30 TEX. ADMIN. CODE ch. 305 (relating to Consolidated Permits) to:

Water Quality Applications Team,
Permits Administrative Review Section
Registration, Review, and Reporting Division, MC 161
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

- b. Respond completely and adequately, as determined by TCEQ, to all request for information concerning the permit application within 30 days after the date of such requests or by any other deadline specified in writing; and
- c. Within 300 days after the effective date of this Agreed Order, Downstream Environmental shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

Downstream Environmental shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.b. to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

and

Water Section Manager
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Street, Suite H
Houston, Texas 77023-1452

- 3. The provisions of this Agreed Order shall apply to and be binding upon Downstream Environmental. Downstream Environmental is ordered to give notice of the Agreed Order to

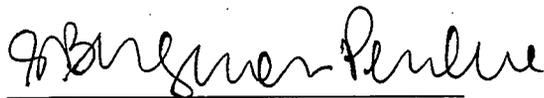
personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

4. If Downstream Environmental 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, Downstream Environmental's failure to comply is not a violation of this Agreed Order. Downstream Environmental shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Downstream Environmental shall notify the Executive Director within seven days after Downstream Environmental 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 Downstream Environmental shall be made in writing to the Executive Director. Extensions are not effective until Downstream Environmental 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 Downstream Environmental 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.
8. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T. CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of this Agreed Order to Downstream Environmental, or three days after the date on which the Commission mails notice of this Agreed Order to Downstream Environmental, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

5/3/2010

Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or Downstream Environmental's failure to timely pay the penalty amount, may result in:

- A negative impact on Downstream Environmental's compliance history;
- Greater scrutiny of any permit applications submitted by Downstream Environmental;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against Downstream Environmental;
- Automatic referral to the Attorney General's Office of any future enforcement actions against Downstream Environmental; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution



Signature

Date

1/26/10

MARY WIMBISH

Name (Printed or typed)

Title

CEO

Authorized representative of
Downstream Environmental, L.L.C.