

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2010-0470-MLM-E TCEQ ID: RN105610075 CASE NO.: 39370

RESPONDENT NAME: V. C. Whitworth

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"/> IMMEDIATE AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input checked="" 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 checked="" type="checkbox"/> WATER QUALITY & OCCUPATIONAL LICENSING	<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
<p>SITE WHERE VIOLATION(S) OCCURRED: V.C. Whitworth, Property located at 6493 West Farm-to-Market Road 765, Doole, McCulloch County</p> <p>TYPE OF OPERATION: Unauthorized on-site sewage facility ("OSSF")</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 July 12, 2010. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. V. C. Whitworth, Owner, HCR 73, Box 2, Doole, Texas 76836-9701 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 type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: None</p> <p>Date of Investigation Relating to this Case: March 8, 2010</p> <p>Date of NOV/NOE Relating to this Case: March 11, 2010 (NOE)</p> <p>Background Facts: This was a record review.</p> <p>WATER</p> <p>1) Failure to meet the conditions of applicable OSSF regulations. Specifically, the Respondent failed to prevent two unauthorized discharges from the waste disposal pipes of two mobile structures at the Site. The Respondent was using two unauthorized seepage pits as domestic waste disposal systems [30 TEX. ADMIN. CODE § 285.3(i), TEX. WATER CODE § 26.121(a), and TEX. HEALTH & SAFETY CODE § 366.004].</p> <p>2) Failure to possess a state OSSF installer's license prior to constructing an OSSF at the Site. Specifically, the Respondent constructed an OSSF at the Site without a license [30 TEX. ADMIN. CODE §§ 30.5(a) and 285.50(b)].</p>	<p>Total Assessed: \$1,292</p> <p>Total Deferred: \$258 <input checked="" type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$1,034</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input 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 discontinued using the two unauthorized seepage pits at the Site on April 9, 2010.</p> <p>Ordering Provisions:</p> <p>The Order will require the Respondent to:</p> <p>a. Immediately upon the effective date of this Agreed Order, cease performing services, constructing, installing, altering, or repairing OSSFs until properly licensed;</p> <p>b. Within 30 days after the effective date of this Agreed Order, properly close the pits including removal and disposal of waste from any overflows; and</p> <p>c. Within 45 days after the effective date of this Agreed Order, submit written certification and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provisions a. and b.</p>

Additional ID No(s): N/A

Penalty Calculation Worksheet (PCW)

TCEQ Policy Revision 2 (September 2002)PCW Revision October 30, 2008

DATES	Assigned	22-Mar-2010	Screening	22-Mar-2010	EPA Due
	PCW	23-Mar-2010			

RESPONDENT/FACILITY INFORMATION			
Respondent	V. C. Whitworth		
Reg. Ent. Ref. No.	RN105610075		
Facility/Site Region	8-San Angelo	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	39370	No. of Violations	2
Docket No.	2010-0470-MLM-E	Order Type	1660
Media Program(s)	On-Site Sewage Disposal	Government/Non-Profit	No
Multi-Media	All Occupational Licenses	Enf. Coordinator	Jorge Ibarra, P.E.
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$2,500

Penalty Calculation Section			
TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1		\$1,125
ADJUSTMENTS (+/-) TO SUBTOTAL 1			
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the Indicated percentage.</small>			
Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$56
Notes	The Respondent was issued one NOV with the same/similar type of violations.		
Culpability	No	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 \$132	*Capped at the Total EB \$ Amount	
	Approx. Cost of Compliance \$1,611		
SUM OF SUBTOTALS 1-7		Final Subtotal	\$1,181
OTHER FACTORS AS JUSTICE MAY REQUIRE	9.4%	Adjustment	\$111
Notes	Recommended enhancement to capture the avoided cost associated with Violation No. 2.		
		Final Penalty Amount	\$1,292
STATUTORY LIMIT ADJUSTMENT		Final Assessed Penalty	\$1,292
DEFERRAL	20.0% Reduction	Adjustment	-\$258
Notes	Deferral offered for expedited settlement.		
PAYABLE PENALTY			\$1,034

Screening Date 22-Mar-2010

Docket No. 2010-0470-MLM-E

PCW

Respondent V. C. Whitworth

Policy Revision 2 (September 2002)

Case ID No. 39370

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105610075

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Jorge Ibarra, P.E.

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
<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)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

The Respondent was issued one NOV with the same/similar type of violations.

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

Screening Date 22-Mar-2010	Docket No. 2010-0470-MLM-E	PCW		
Respondent V. C. Whitworth	<i>Policy Revision 2 (September 2002)</i>			
Case ID No. 39370	<i>PCW Revision October 30, 2008</i>			
Reg. Ent. Reference No. RN105810075				
Media [Statute] On-Site Sewage Disposal				
Enf. Coordinator Jorge Ibarra, P.E.				
Violation Number 1				
Rule Cite(s)	30 Tex. Admin. Code § 285.3(j), Tex. Water Code § 26.121(a), and Tex. Health & Safety Code § 366.004			
Violation Description	Failed to meet the conditions of applicable on-site sewage facility ("OSSF") regulations. Specifically, the Respondent failed to prevent two unauthorized discharges from the waste disposal pipes of two mobile structures at the Site. The Respondent was using two unauthorized seepage pits as domestic waste disposal systems.			
Base Penalty		\$2,500		
>> Environmental, Property and Human Health Matrix				
Harm				
Release	Major	Moderate	Minor	
Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Percent			10%	
>> Programmatic Matrix				
Falsification				
Major			Moderate	Minor
<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>
Percent			0%	
Matrix Notes	Human health or the environment has been exposed to insignificant amounts of pollutants as a result of the violation.			
Adjustment			\$2,250	
			\$250	
Violation Events				
Number of Violation Events		2	Number of violation days	14
<i>mark only one with an x</i>	daily	<input type="checkbox"/>		
	weekly	<input type="checkbox"/>		
	monthly	<input type="checkbox"/>		
	quarterly	<input checked="" type="checkbox"/>		
	semiannual	<input type="checkbox"/>		
	annual	<input type="checkbox"/>		
	single event	<input type="checkbox"/>		
Violation Base Penalty			\$500	
Two quarterly events are recommended (one event for each discharge) from the record review date of March 8, 2010 to screening date of March 22, 2010.				
Good Faith Efforts to Comply			\$0	
0.0% Reduction				
Before NOV NOV to EDRP/Settlement Offer				
Extraordinary	<input type="checkbox"/>	<input type="checkbox"/>		
Ordinary	<input type="checkbox"/>	<input type="checkbox"/>		
N/A	<input checked="" type="checkbox"/>	(mark with x)		
Notes	The Respondent does not meet the good faith criteria for this violation.			
Violation Subtotal			\$500	
Economic Benefit (EB) for this violation		Estimated EB Amount	\$21	
		Statutory Limit Test	Violation Final Penalty Total	\$574
This violation Final Assessed Penalty (adjusted for limits)			\$574	

Economic Benefit Worksheet

Respondent V. C. Whitworth
Case ID No. 39370
Reg. Ent. Reference No. RN105610075
Media On-Site Sewage Disposal
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal	\$600	8-Mar-2010	1-Nov-2010	0.65	\$16	n/a	\$16
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	8-Mar-2010	9-Apr-2010	0.09	\$4	n/a	\$4

Notes for DELAYED costs

Estimated cost to remove the waste from the unauthorized discharges and properly dispose of it and to discontinue using the two unauthorized seepage pits at the Site. Date Required is the investigation date, Final Date is the date use of the seepage pits was discontinued and the expected compliance date.

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

\$1,500

TOTAL

\$21

Screening Date 22-Mar-2010	Docket No. 2010-0470-MLM-E	PCW		
Respondent V. C. Whitworth	<small>Policy Revision 2 (September 2002)</small>			
Case ID No. 39370	<small>PCW Revision October 30, 2008</small>			
Reg. Ent. Reference No. RN105610075				
Media [Statute] On-Site Sewage Disposal				
Enf. Coordinator Jorge Ibarra, P.E.				
Violation Number <input type="text" value="2"/>				
Rule Cite(s)	30 Tex. Admin. Code §§ 30.5(a) and 285.50(b)			
Violation Description	Failed to possess a state OSSF installer's license prior to constructing an OSSF at the Site. Specifically, the Respondent constructed an OSSF at the Site without a license.			
Base Penalty		<input type="text" value="\$2,500"/>		
>> Environmental, Property and Human Health Matrix				
OR	Harm			
	Release	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Percent				<input type="text" value="25%"/>
>> Programmatic Matrix				
Falsification				
Major	Moderate	Minor	<input type="text"/>	
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
Percent			<input type="text" value="0%"/>	
Matrix Notes	Failure to possess a state OSSF installer's license prior to constructing an OSSF at the Site could result in poor operation of the OSSF which in turn could result in the exposure of significant amounts of pollutants which would exceed levels that are protective of human health or the environment.			
Adjustment			<input type="text" value="\$1,875"/>	
			<input type="text" value="\$625"/>	
Violation Events				
Number of Violation Events		<input type="text" value="1"/>	Number of violation days	
		<input type="text" value="1"/>		
<small>mark only one with an x</small>	daily	<input type="text"/>	Violation Base Penalty	
	weekly	<input type="text"/>		
	monthly	<input type="text"/>		
	quarterly	<input type="text"/>		
	semiannual	<input type="text"/>		
	annual	<input type="text"/>		
	single event	<input checked="" type="checkbox"/>		
<input type="text" value="One single event is recommended."/>			<input type="text" value="\$625"/>	
Good Faith Efforts to Comply			<input type="text" value="\$0"/>	
0.0% Reduction				
<small>Before NOV NOV to EDFRP/Settlement Offer</small>				
Extraordinary	<input type="text"/>	<input type="text"/>		
Ordinary	<input type="text"/>	<input type="text"/>		
N/A	<input checked="" type="checkbox"/>	<small>(mark with x)</small>		
Notes	The Respondent does not meet the good faith criteria for this violation.			
Violation Subtotal			<input type="text" value="\$625"/>	
Economic Benefit (EB) for this violation			Statutory Limit Test	
Estimated EB Amount		<input type="text" value="\$111"/>	Violation Final Penalty Total	
			<input type="text" value="\$718"/>	
This violation Final Assessed Penalty (adjusted for limits)			<input type="text" value="\$718"/>	

Economic Benefit Worksheet

Respondent V. C. Whitworth
Case ID No. 39370
Reg. Ent. Reference No. RN105810075
Media On-Site Sewage Disposal
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				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)	\$111	8-Mar-2010	22-Mar-2010	0.00	\$0	\$111	\$111

Notes for AVOIDED costs

Estimated cost to obtain an OSSF installer's license. Required Date is the investigation date, Final Date is the screening date.

Approx. Cost of Compliance

\$111

TOTAL

\$111

Compliance History Report

Customer/Respondent/Owner-Operator: CN803400763 WHITWORTH, V C Classification: Rating:
Regulated Entity: RN105610075 VC WHITWORTH Classification: Site Rating:
ID Number(s):
Location: 6493 W FM 765, DOOLE, TX, 76836
TCEQ Region: REGION 08 - SAN ANGELO
Date Compliance History Prepared: April 02, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: March 22, 2005 to March 22, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Jorge Ibarra, P.E. Phone: (817) 588-5890

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: 09-01-2009 Repeat Violator: N.

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 03/12/2010 (794635)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 10/13/2008 (705225)
Self NO Classification: Major
Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
Description: Failure to obtain authorization from the Texas Commission on Environmental Quality for the unauthorized discharge into or adjacent to waters in the state.
Self NO Classification: Major
Citation: 30 TAC Chapter 285, SubChapter A 285.3(i)
5B THSC Chapter 366, SubChapter A 366.004
Description: Failure to meet the conditions of the applicable state On-Site Sewage Facility, (OSSF) regulations of 30 Texas Administrative Code, (TAC) Chapter 285, Section 3(i), for the unauthorized construction and use of two seepage pits as unauthorized domestic waste disposal systems.
 - 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
V. C. WHITWORTH
RN105610075**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2010-0470-MLM-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 V. C. Whitworth ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 366 and TEX. WATER CODE chs. 7 and 26. 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 property with an unauthorized on-site sewage facility ("OSSF") located at 6493 West Farm-to-Market Road 765 in Doole, McCulloch County, Texas (the "Site").
2. The TCEQ has general authority concerning the location, design, construction, installation, and proper functioning of an OSSF pursuant to TEX. HEALTH & SAFETY CODE ch. 366.
3. The Respondent has discharged sewage into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
4. 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.
5. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about March 15, 2010.
6. 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.
7. An administrative penalty in the amount of One Thousand Two Hundred Ninety-Two Dollars (\$1,292) is assessed by the Commission in settlement of the violations alleged in Section II

("Allegations"). The Respondent has paid One Thousand Thirty-Four Dollars (\$1,034) of the administrative penalty and Two Hundred Fifty-Eight Dollars (\$258) 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, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

8. 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.
9. 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.
10. The Executive Director recognizes that the Respondent discontinued using the two unauthorized seepage pits at the Site on April 9, 2010.
11. 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.
12. 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.
13. 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 of the Site, the Respondent is alleged to have:

1. Failed to meet the conditions of applicable OSSF regulations, in violation of 30 TEX. ADMIN. CODE § 285.3(i), TEX. WATER CODE § 26.121(a), and TEX. HEALTH & SAFETY CODE § 366.004, as documented during a record review conducted on March 8, 2010. Specifically, the Respondent failed to prevent two unauthorized discharges from the waste disposal pipes of two mobile structures at the Site. The Respondent was using two unauthorized seepage pits as domestic waste disposal systems.
2. Failed to possess a state OSSF installer's license prior to constructing an OSSF at the Site, in violation of 30 TEX. ADMIN. CODE §§ 30.5(a) and 285.50(b), as documented during a record review conducted on March 8, 2010. Specifically, the Respondent constructed an OSSF at the Site without a license.

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 7 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: V. C. Whitworth, Docket No. 2010-0470-MLM-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 undertake the following technical requirements:
 - a. Immediately upon the effective date of this Agreed Order, cease performing services, constructing, installing, altering, or repairing OSSFs until properly licensed in accordance with the requirements of 30 TEX. ADMIN. CODE ch. 285;
 - b. Within 30 days after the effective date of this Agreed Order, properly close the pits including removal and disposal of waste from any overflows, in accordance with 30 TEX. ADMIN. CODE § 285.36 (or 30 TEX. ADMIN. CODE ch. 331 if more than 5,000 gallons of sewage per day); and
 - c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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
San Angelo Regional Office
Texas Commission on Environmental Quality
622 South Oakes, Suite K
San Angelo, Texas 76903-7013

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 Szellin
For the Executive Director

6/22/2010
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.

V.C. Whitworth
Signature

5-11-2010
Date

V. C. Whitworth
Name (Printed or typed)
Authorized Representative of
V. C. Whitworth

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.

