EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2010-0813-WOC-E RN104455647 CASE NO. 39717

RESPONDENT NAME: DANIEL GALVAN, JR.

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

SITE WHERE VIOLATION(S) OCCURRED: 1,200 feet southwest of the intersection of State Highway 71 and State Highway 111, Blessing, Matagorda County

TYPE OF OPERATION: Wastewater treatment plant

SMALL BUSINESS: _X_ Yes ___ No

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired November 22, 2010. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503
Lena Roberts, Litigation Division, MC 175, (512) 239-3400
TCEQ Enforcement Coordinator: J.R. Cao, Water Enforcement Section, MC 224, (512) 239-2543
TCEQ Regional Contact: Stephen Smith, Houston Regional Office, MC R-12, (713) 767-3581
Respondent: Daniel Galvan, Jr., P O Box 55, Blessing, Texas 77419
Respondent's Attorney: Not represented by counsel on this enforcement matter.

RESPONDENT NAME: DANIEL GALVAN, JR.
DOCKET NO. 2010-0813-WOC-E

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: ___ Complaint _X_ Routine ___ Enforcement Follow-up ___ Records Review **Date of Complaint:** None **Dates of Investigations:** November 17, 2009 **Date of NOE:** January 7, 2010 **Background Facts:** The EDPRP was filed on August 17, 2010, and mailed to Respondent via first class mail and certified mail, return receipt requested. The EDPRP sent by certified mail was returned "unclaimed." The first class mail has not been returned. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference. **Current Compliance Status:** Respondent has not yet submitted documentation to certify compliance with the technical requirements. **WOC:** Failed to obtain a valid wastewater operator license prior to performing process control duties in the treatment of wastewater [30 TEX. ADMIN. CODE §§ 30.5(a) and 30.331(b) and TEX. WATER CODE §§ 26.0301(c) and 37.003].	**Total Assessed:** $3,750 **Total Deferred:** $0 ___ Expedited Order ___ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Due to General Revenue:** $3,750 This is a Default Order. Respondent has not actually paid any of the assessed administrative penalty but will be required to do so within 30 days under the terms of this Order. **Compliance History Classifications:** *Person/CN* – N/A *Site/RN* – N/A **Major Source:** ___ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Ordering Provisions:** Respondent shall undertake the following technical requirements: 1. Immediately cease operating the Facility until such time that an effective valid Class "D" wastewater operator license has been obtained. 2. Within 15 days, submit written certification demonstrating compliance.

Penalty Calculation Worksheet (PCW)

TCEQ

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

DATES					
Assigned	10-May-2010				
PCW	29-Jul-2010	Screening	17-May-2010	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Daniel Galvan, Jr.		
Reg. Ent. Ref. No.	RN104455647		
Facility/Site Region	12-Houston	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	39717	No. of Violations	1
Docket No.	2010-0813-WOC-E	Order Type	1660
Media Program(s)	All Occupational Licenses	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	JR Cao
		EC's Team	Enforcement Team 1

Admin. Penalty $ Limit Minimum $0 Maximum $2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $3,750

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 0.0% Enhancement *Subtotals 2, 3, & 7* $0

Notes: No adjustment due to compliance history.

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 $4

Approx. Cost of Compliance $111

**Capped at the Total EB $ Amount*

SUM OF SUBTOTALS 1-7 *Final Subtotal* $3,750

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% *Adjustment*

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount $3,750

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* $3,750

DEFERRAL Reduction *Adjustment* $0

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

Notes: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY $3,750

Screening Date 17-May-2010 **Docket No.** 2010-0813-WOC-E **PCW**

Respondent Daniel Galvan, Jr.

Policy Revision 2 (September 2002)

Case ID No. 39717

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104455647

Media [Statute] All Occupational Licenses

Enf. Coordinator JR Cao

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*)	0	0%
	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 judgements 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%

		Please Enter Yes or No	
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

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

No adjustment due to compliance history.

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

Screening Date 17-May-2010 | **Docket No.** 2010-0813-WOC-E | **PCW**

Respondent Daniel Galvan, Jr.

Policy Revision 2 (September 2002)

Case ID No. 39717

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104455647

Media [Statute] All Occupational Licenses

Enf. Coordinator JR Cao

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 30.5(a) and 30.331(b) and Tex. Water Code §§ 26.0301(c) and 37.003

Violation Description Failed to obtain a valid wastewater operator license prior to performing process control duties in the treatment of wastewater. Specifically, the Respondent was operating the Facility without a valid class "D" wastewater operator license.

Base Penalty $2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment $1,875

$625

Violation Events

Number of Violation Events: 6 | 131 Number of violation days

mark only one with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty $3,750

Six monthly events are recommended from the investigation date (November 17, 2009) to the screening date (May 17, 2010).

Good Faith Efforts to Comply

0.0% Reduction — $0

	Before NOV	NOV to EDPRP/Settlement
Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

Violation Subtotal $3,750

Economic Benefit (EB) for this violation

Estimated EB Amount $4

Statutory Limit Test

Violation Final Penalty Total $3,750

This violation Final Assessed Penalty (adjusted for limits) $3,750

Economic Benefit Worksheet

Respondent Daniel Galvan, Jr.
Case ID No. 39717
Reg. Ent. Reference No. RN104455647
Media All Occupational Licenses
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)	$111	19-Nov-2009	17-May-2010	0.49	$0	$4	$4
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: The cost includes the amount to obtain a valid wastewater operator license. Date required is the date of the investigation. Final date is the screening 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: $111

TOTAL: $4

Compliance History Report

Customer/Respondent/Owner-Operator:	CN602740912	GALVAN, DANIEL JR	Classification:	Rating:
Regulated Entity:	RN104455647	GALVAN, DANIEL JR	Classification:	Site Rating:

ID Number(s):	WASTEWATER LICENSING	LICENSE	WW0041394
	WATER LICENSING	LICENSE	WG0010291

Location: Post Office Box 55, Blessing, Texas 77419

TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: May 11, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: May 11, 2005 to May 11, 2010

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

Name: JR Cao Phone: 239 - 2543

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.

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 05/07/2010 (782706)

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

N/A

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING DANIEL GALVAN, JR.; RN104455647	§ § § § § §	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

DEFAULT ORDER
DOCKET NO. 2010-0813-WOC-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7, 26 and 37 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Daniel Galvan, Jr. ("Respondent").

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

FINDINGS OF FACT

1. Respondent operates a wastewater treatment plant located 1,200 feet southwest of the intersection of State Highway 71 and State Highway 111 in Blessing, Matagorda County, Texas (the "Facility").

2. Respondent performs process control activities at a sewage treatment facility or supervises the maintenance of a sewage collection system. Therefore, Respondent is subject to TCEQ jurisdiction pursuant to TEX. WATER CODE chs. 26 and 37 and the rules of the TCEQ.

3. During an investigation conducted on November 17, 2009, a TCEQ Houston Regional investigator documented that Respondent failed to obtain a valid wastewater operator license prior to performing process control duties in the treatment of wastewater. Specifically, Respondent was operating the Facility without a valid Class "D" wastewater operator license.

4. Respondent received notice of the violation on or about January 12, 2010.

5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Daniel Galvan, Jr." (the "EDPRP") in the TCEQ Chief Clerk's office on August 17, 2010.

6. By letter dated August 17, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.

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

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7, 26 and 37 and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3, Respondent failed to obtain a valid wastewater operator license prior to performing process control duties in the treatment of wastewater, in violation of 30 TEX. ADMIN. CODE §§ 30.5(a) and 30.331(b) and TEX. WATER CODE §§ 26.0301(c) and 37.003.

3. As evidenced by Findings of Fact Nos. 5 and 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).

4. As evidenced by Finding of Fact No. 7, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.

5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of three thousand seven hundred fifty dollars ($3,750.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of three thousand seven hundred fifty dollars ($3,750.00) for violations of state statutes and the rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.

2. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality." The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Daniel Galvan, Jr.; Docket No. 2010-0813-WOC-E" to:

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

3. Respondent shall undertake the following technical requirements:

   a. Immediately upon the effective date of this Order, Respondent shall cease operating the Facility until such time that an effective valid Class "D" wastewater operator license has been obtained, in accordance with 30 TEX. ADMIN. CODE §§ 30.5(a) and 30.331(b); and

   b. Within 15 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and /or other records, to demonstrate compliance with Ordering Provision No. 2.a. 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."

Respondent shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

with a copy to:

Mr. Stephen Smith, Water Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
Houston Regional Office
5425 Polk Avenue, Suite H
Houston, TX 77023-1486

4. All relief not expressly granted in this Order is denied.

5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.

6. If Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.

9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.

10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

For the Commission

AFFIDAVIT OF SHARESA Y. ALEXANDER

STATE OF TEXAS §
§
COUNTY OF TRAVIS §

"My name is Sharesa Y. Alexander. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Daniel Galvan, Jr." (the "EDPRP") was filed with the Office of the Chief Clerk on August 17, 2010.

The EDPRP was mailed to Respondent at his last known address on August 17, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

Sharesa Y. Alexander

Sharesa Y. Alexander, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 4th day of October, A.D., 2010.

Margaret Jackson

Notary Signature

MARGARET T JACKSON
NOTARY PUBLIC
State of Texas
Comm. Exp. 12-21-2013