

Executive Summary – Enforcement Matter – Case No. 39840  
DAFFRON PARTNERS, LTD.  
RN105786560  
Docket No. 2010-0937-WQ-E

**Order Type:**

Agreed Order

**Findings Order Justification:**

N/A

**Media:**

WQ

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

8293 & 8295 Lime Creek Road, Volente, Travis County

**Type of Operation:**

home building construction site

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

**Texas Register Publication Date:** September 2, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$1,050

**Amount Deferred for Expedited Settlement:** N/A

**Amount Deferred for Financial Inability to Pay:** N/A

**Total Paid to General Revenue:** \$1,050

**Total Due to General Revenue:** \$0

**SEP Conditional Offset:** N/A

**Compliance History Classifications:**

Person/CN – Average

Site/RN – Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

***Investigation Information***

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** August 3, 2009; April 16, 2010  
**Date(s) of NOV(s):** August 26, 2009  
**Date(s) of NOE(s):** May 28, 2010

***Violation Information***

Failed to prevent the unauthorized discharge of sediment adjacent to water in the state [TEX. WATER CODE § 26.121].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

1. Installed new erosion and sediment controls, including new silt fences, a concrete deposit basin, and added native grass seed to establish vegetation;
2. Removed accumulated sediment from the drainage ditch in front of the Site that discharges into Gate Hollow Creek; and
3. Removed sediment from Gate Hollow Creek and submitted a final sediment removal report.

**Technical Requirements:**

N/A

***Litigation Information***

**Date Petition(s) Filed:** December 16, 2010  
**Date Answer(s) Filed:** December 20, 2010  
**SOAH Referral Date:** April 15, 2011  
**Hearing Date(s):**  
Preliminary hearing: May 26, 2011  
Evidentiary hearing: September 20, 2011  
**Settlement Date:** August 15, 2011

***Contact Information***

**TCEQ Attorneys:** Anna M. Treadwell, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400

**TCEQ SEP Coordinator:** N/A

**TCEQ Enforcement Coordinator:** Jorge Ibarra, Water Enforcement Section, (817) 588- 5890

**TCEQ Regional Contact:** Carolyn Runyon, Austin Regional Office, (512) 339-2929

**Respondent:** DAFFRON PARTNERS, LTD., Louise Daffron, General Partner, 8295 Lime Creek Road, Volente, Texas 78641

**Respondent's Attorney:** Ali Abazari, Jackson Walker L.L.P., 100 Congress Avenue, Suite 1100 Austin, Texas 78701



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	7-Jun-2010	<b>Screening</b>	8-Jun-2010	<b>EPA Due</b>	
	<b>PCW</b>	14-Jan-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	DAFFRON PARTNERS, LTD.		
<b>Reg. Ent. Ref. No.</b>	RN105786560		
<b>Facility/Site Region</b>	11-Austin	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	39840	<b>No. of Violations</b>	1
<b>Docket No.</b>	2010-0937-WQ-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Jorge Ibarra, P.E.
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit</b>	<b>Minimum</b>	\$0	<b>Maximum</b>
			\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$1,000
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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.

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$50
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Notes: The Respondent was issued one NOV with the same/similar type of violations.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$178  
 Approx. Cost of Compliance: \$5,000  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$1,050
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** \$1,050

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$1,050
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<b>DEFERRAL</b>		Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral offered for non expedited settlement.

<b>PAYABLE PENALTY</b>	\$1,050
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Screening Date 8-Jun-2010

Docket No. 2010-0937-WQ-E

PCW

Respondent DAFFRON PARTNERS, LTD.

Policy Revision 2 (September 2002)

Case ID No. 39840

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105786560

Media [Statute] Water Quality

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 ( <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

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

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

**Screening Date** 8-Jun-2010 **Docket No.** 2010-0937-WQ-E **PCW**  
**Respondent** DAFFRON PARTNERS, LTD. *Policy Revision 2 (September 2002)*  
**Case ID No.** 39840 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105786560  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Jorge Ibarra, P.E.

**Violation Number** 1  
**Rule Cite(s)** Tex. Water Code § 26.121  
**Violation Description**  
 Failed to prevent the unauthorized discharge of sediment adjacent to water in the state. Specifically, sediment and erosion controls were noted installed at the Sites, however, the filter fabric on the rock berm and the silt fence had a sediment stain on all sides indicating that sediment had discharged beyond the control. Also, the silt fence prior to the berm was in need of maintenance and was not trenched in the ground. Erosion was observed along the driveway bypassing the silt fence down to the right of way. The sediment was discharged off-site and into the drainage that flows into Gate Hollow Creek.

**Base Penalty** \$10,000

**>> Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual				x	10%
Potential					

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0%

**Matrix Notes**  
 Failure to prevent the unauthorized discharge of sediment adjacent to water in the state resulted in the release of insignificant amounts of pollutants which do not exceed levels that are protective of human health or the environment.

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 1 53 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

**Violation Base Penalty** \$1,000

One quarterly event is recommended from the investigation date of April 16, 2010 to the screening date of June 8, 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** \$1,000

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

**Estimated EB Amount** \$178 **Violation Final Penalty Total** \$1,050

**This violation Final Assessed Penalty (adjusted for limits)** \$1,050

## Economic Benefit Worksheet

**Respondent** DAFFRON PARTNERS, LTD.  
**Case ID No.** 39840  
**Reg. Ent. Reference No.** RN105786560  
**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	\$5,000	16-Apr-2010	1-Jan-2011	0.71	\$178	n/a	\$178
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove sediment from affected areas and properly dispose of it and to stabilize the site. Date required is the record review date. Final date is 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

\$5,000

**TOTAL**

\$178

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603520990 DAFFRON PARTNERS, LTD. Classification: AVERAGE Rating: 4.00  
Regulated Entity: RN105786560 8293 & 8295 LIME CREEK ROAD, Classification: AVERAGE Site Rating: 4.00  
VOLENTE, TRAVIS COUNTY, TEXAS

ID Number(s):

Location:

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: June 07, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 07, 2005 to June 07, 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: 9/1/2009 Repeat Violator: NO

## 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.)
    - 1 08/28/2009 (765170)
    - 2 06/01/2010 (799596)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

**Date: 08/26/2009 (765170)**

Self Report? NO Classification: Major  
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)  
Description: Failure to obtain authorization under the Texas Pollutant Discharge Elimination System (TPDES) Construction General Permit (CGP).

Self Report? NO Classification: Moderate  
Citation: TWC Chapter 26 26.121  
Description: Unauthorized discharge of sediment to Water in the State.
  - 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

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
DAFFRON PARTNERS, LTD.;  
RN105786560**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2010-0937-WQ-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding DAFFRON PARTNERS, LTD., ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Ali Abazari of the law firm Jackson Walker L.L.P., appear before the Commission and together stipulate that:

1. Respondent operated a home building construction site located at 8293 Lime Creek Road and 8295 Lime Creek Road, Volente, Travis County, Texas (the "Site"). Respondent discharged waste from the Site into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
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 Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent 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 Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of one thousand fifty dollars (\$1,050.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid one thousand fifty dollars (\$1,050.00) of the administrative penalty.
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 Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.

8. The Executive Director recognizes that Respondent implemented the following corrective measures at the Site:
  - a. Installed new erosion and sediment controls, including new silt fences, a concrete deposit basin, and added native grass seed to establish vegetation;
  - b. Removed accumulated sediment from the drainage ditch in front of the Site that discharges into Gate Hollow Creek; and
  - c. Removed sediment from Gate Hollow Creek.
9. 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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 August 3, 2009, and record review conducted on April 16, 2010, a TCEQ Austin Regional Office investigator documented that Respondent failed to prevent the unauthorized discharge of sediment adjacent to water in the state. Specifically, sediment and erosion controls were noted installed at the Site, however, the filter fabric on the rock berm and the silt fence had a sediment stain on all sides indicating that sediment had discharged beyond the control. Also, the silt fence prior to the berm was in need of maintenance and was not trenched in the ground. Erosion was observed along the driveway bypassing the silt fence down to the right of way. The sediment was discharged off-site and into the drainage ditch that flows into Gate Hollow Creek, in violation of TEX. WATER CODE § 26.121.
2. Respondent received notice of the violation on or about June 2, 2010.

## **III. DENIALS**

Respondent generally denies each Allegation in Section II.

## **IV. ORDERING PROVISIONS**

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5. The payment of this administrative penalty and 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 considering or requiring corrective actions or penalties for violations which are not raised here.

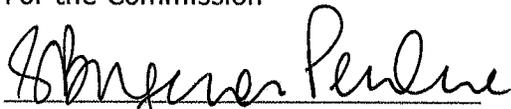
2. All relief not expressly granted in this Agreed Order is denied.
3. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If 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, Respondent's failure to comply is not a violation of this Agreed 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.
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 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.
6. This Agreed Order, issued by the Commission, shall not be admissible against 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 separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

8. Pursuant to 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 Respondent, or three days after the date on which the Commission mails notice of this Agreed Order to 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



\_\_\_\_\_  
For the Executive Director

10/12/2011

\_\_\_\_\_  
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 DAFFRON PARTNERS, LTD., 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 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;
- 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, I understand that any falsification of any compliance documents may result in criminal prosecution.

  
Signature - Louise Daffron, General Partner  
DAFFRON PARTNERS, LTD.

8-15-11  
\_\_\_\_\_  
Date