

**Executive Summary – Enforcement Matter – Case No. 41893**

**Robert W. Pixley**

**RN103223178**

**Docket No. 2011-1010-OSI-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

OSI

**Small Business:**

Yes

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

24480 United States Highway 96 South, Kirbyville, Jasper County and 1699 Farm-to-Market Road 2665, Goodrich, Polk County

**Type of Operation:**

On-site sewage facility (“OSSF”)

**Other Significant Matters:**

Additional Pending Enforcement Actions: Yes, Docket No. 2011-1243-OSI-E

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

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

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$225

**Amount Deferred for Expedited Settlement:** \$45

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$180

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

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - N/A

Site/RN - N/A

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

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**RN103223178**

**Docket No. 2011-1010-OSI-E**

***Investigation Information***

**Complaint Date(s):** N/A

**Complaint Information:** N/A

**Date(s) of Investigation:** May 4, 2011

**Date(s) of NOE(s):** June 6, 2011

***Violation Information***

Failed to obtain documentation of authorization to construct (“ATC”) prior to beginning construction of an OSSF. Specifically, an OSSF system was installed before an ATC was obtained [TEX. HEALTH & SAFETY CODE § 366.051(c) and 30 TEX. ADMIN. CODE § 285.61(4)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

The Executive Director recognizes that by June 28, 2011, an ATC was obtained for the Site and the Respondent developed and implemented a procedure to ensure that construction of an OSSF is not started before an ATC is obtained for the OSSF.

**Technical Requirements:**

N/A

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Jorge Ibarra, P.E., Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5890; Debra Barber, Enforcement Division, MC 219, (512) 239-0412

**TCEQ SEP Coordinator:** N/A

**Respondent:** Robert W. Pixley, Installer, P.O. Box 2303, Livingston, Texas 77351

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	13-Jun-2011	<b>Screening</b>	21-Jun-2011	<b>EPA Due</b>	
	<b>PCW</b>	22-Jun-2011				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Robert W. Pixley	
<b>Reg. Ent. Ref. No.</b>	RN103223178	
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b> Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	41893	<b>No. of Violations</b>	1
<b>Docket No.</b>	2011-1010-OSI-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	On-Site Sewage Disposal	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Thomas Jecha, P.G.
		<b>EC's Team</b>	Enforcement Team 3
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$2,500

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History**  Enhancement **Subtotals 2, 3, & 7**

**Notes**

**Culpability**   Enhancement **Subtotal 4**

**Notes**

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5**

**Economic Benefit**  Enhancement\* **Subtotal 6**

Total EB Amounts  \*Capped at the Total EB \$ Amount  
 Approx. Cost of Compliance

**SUM OF SUBTOTALS 1-7** **Final Subtotal**

**OTHER FACTORS AS JUSTICE MAY REQUIRE**  **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

**Notes**

**Final Penalty Amount**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty**

**DEFERRAL**  Reduction **Adjustment**

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

**Notes**

**PAYABLE PENALTY**

Screening Date 21-Jun-2011

Docket No. 2011-1010-OSI-E

PCW

Respondent Robert W. Pixley

Policy Revision 2 (September 2002)

Case ID No. 41893

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103223178

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Thomas Jecha, P.G.

### 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%
<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) 0%

>> Repeat Violator (Subtotal 3)

No

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 for compliance history.

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

Screening Date 21-Jun-2011

Docket No. 2011-1010-OSI-E

PCW

Respondent Robert W. Pixley

Policy Revision 2 (September 2002)

Case ID No. 41893

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103223178

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Thomas Jecha, P.G.

Violation Number 1

Rule Cite(s) Tex. Health & Safety Code § 366.051(c) and 30 Tex. Admin. Code § 285.61(4)

Violation Description Failed to obtain documentation of authorization to construct ("ATC") prior to beginning construction of an on-site sewage facility ("OSSF"). Specifically, the Respondent installed an OSSF system at 24480 United States Highway 96 South in Kirbyville, Jasper County before an ATC was obtained.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		
100% of the rule requirement was not met.					

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 1 Number of violation days 1

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$250

One single event is recommended.

Good Faith Efforts to Comply

10.0% Reduction

\$25

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

Notes An ATC was obtained and new procedures in place by June 28, 2011.

Violation Subtotal \$225

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$225

This violation Final Assessed Penalty (adjusted for limits) \$225

## Economic Benefit Worksheet

**Respondent** Robert W. Pixley  
**Case ID No.** 41893  
**Req. Ent. Reference No.** RN103223178  
**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
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)	\$100	4-May-2011	28-Jun-2011	0.15	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to verify that an ATC was obtained and develop a procedure to verify ATCs are obtained prior to construction. The date required is the investigation date and the final date is the date compliance was documented.

### 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

	\$100
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**TOTAL**

	\$1
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## Compliance History

Customer/Respondent/Owner-Operator: CN601743784 PIXLEY, ROBERT W Classification: Rating:

Regulated RN103223178 PIXLEY, ROBERT W Classification: Site Rating:

ID Number(s): WASTEWATER LICENSING LICENSE WW0002821  
WATER LICENSING LICENSE WG0002332  
ON SITE SEWAGE FACILITY LICENSING LICENSE MP0000093  
ON SITE SEWAGE FACILITY LICENSING LICENSE OS0028195

Location: 1699 FM 2665, Goodrich, Polk Co.

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: June 20, 2011

Agency Decision Requiring Compliance Enforcement

Compliance Period: June 20, 2006 to June 20, 2011

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

Name: Thomas Jecha Phone: 239 - 2576

### 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

### 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 6/6/11 (922095)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - F. Environmental  
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  
ROBERT W. PIXLEY  
RN103223178**

**§           BEFORE THE  
§  
§           TEXAS COMMISSION ON  
§  
§           ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2011-1010-OSI-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 Robert W. Pixley ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 366 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent appear before the Commission and together stipulate that:

1. The Respondent owns and operates an on-site sewage facility ("OSSF") installer business located at 1699 Farm-to-Market Road 2665 in Goodrich, Polk County, Texas and installed an OSSF at 24480 United States Highway 96 South in Kirbyville, Jasper 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 Commission and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 11, 2011.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Two Hundred Twenty-Five Dollars (\$225) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Eighty Dollars (\$180) of the administrative penalty and Forty-Five Dollars (\$45) 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.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the Respondent have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that by June 28, 2011, an authorization to construct ("ATC") was obtained for the Site and the Respondent developed and implemented a procedure to ensure that construction of an OSSF is not started before an ATC is obtained for the OSSF.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## **II. ALLEGATIONS**

As installer of the OSSF at the Site, the Respondent is alleged to have failed to obtain documentation of ATC prior to beginning construction of an OSSF, in violation of TEX. HEALTH & SAFETY CODE § 366.051(c) and 30 TEX. ADMIN. CODE § 285.61(4), as documented during an investigation conducted on May 4, 2011. Specifically, an OSSF system was installed before an ATC was obtained.

## **III. DENIALS**

The Respondent generally denies each allegation in Section II ("Allegations").

#### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Robert W. Pixley, Docket No. 2011-1010-OSI-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. The provisions of this Agreed Order shall apply to and be binding upon the Respondent.
3. 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.
4. 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.
5. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

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

9/22/11  
\_\_\_\_\_  
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.

  
\_\_\_\_\_  
Signature

7/19/11  
\_\_\_\_\_  
Date

ROBERT W. PIXLEY  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Robert W. Pixley

\_\_\_\_\_  
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.