

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO. 2009-1857-OSI-E**

**RN105516637**

**CASE NO. 38703**

**RESPONDENT NAME: MARK PERKINS**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> <b>AGREED ORDER</b>	<b>FINDINGS AGREED ORDER</b>	<b>FINDINGS ORDER FOLLOWING SOAH HEARING</b>
<input checked="" type="checkbox"/> <b>FINDINGS DEFAULT ORDER</b>	<b>SHUTDOWN ORDER</b>	<b>IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER</b>
<b>AMENDED ORDER</b>	<b>EMERGENCY ORDER</b>	
<b>CASE TYPE:</b>		
<input type="checkbox"/> <b>AIR</b>	<input type="checkbox"/> <b>MULTI-MEDIA</b> (check all that apply)	<b>INDUSTRIAL HAZARDOUS WASTE</b>
<input type="checkbox"/> <b>PUBLIC WATER SUPPLY</b>	<input type="checkbox"/> <b>PETROLEUM STORAGE TANKS</b>	<input checked="" type="checkbox"/> <b>OCCUPATIONAL CERTIFICATION</b>
<input type="checkbox"/> <b>WATER QUALITY</b>	<input type="checkbox"/> <b>SEWAGE SLUDGE</b>	<input type="checkbox"/> <b>UNDERGROUND INJECTION CONTROL</b>
<input type="checkbox"/> <b>MUNICIPAL SOLID WASTE</b>	<input type="checkbox"/> <b>RADIOACTIVE WASTE</b>	<input type="checkbox"/> <b>DRY CLEANER REGISTRATION</b>
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 9127 Farm-to-Market Road ("FM") 139, Joaquin, Shelby County</p> <p><b>TYPE OF OPERATION:</b> Septic tank service company and on-site sewage facility</p> <p><b>SMALL BUSINESS:</b>    <input checked="" type="checkbox"/> Yes        No        N/A</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints related to this enforcement action. There is no record of additional pending enforcement actions regarding this respondent.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and Respondent expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired February 8, 2011. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney:</b> Steven M. Fishburn, Litigation Division, MC 175, (512) 239-3400                                    Lena Roberts, Litigation Division, MC 175, (512) 239-3400  <b>TCEQ Enforcement Coordinator:</b> Evette Alvarado, Water Enforcement Section, MC 169, (512) 239-2573  <b>TCEQ Regional Contact:</b> Ronald Hebert, Beaumont Regional Office, MC R-10, (409) 898-3838  <b>Respondent:</b> Mark Perkins, 5244 Farm-to-Market 1275, Nacogdoches, Texas 75961  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**RESPONDENT NAME: MARK PERKINS  
DOCKET NO. 2009-1857-OSI-E**

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint:</b> N/A</p> <p><b>Date of Investigation:</b> September 25, 2009</p> <p><b>Date of NOE:</b> October 20, 2009</p> <p><b>Background Facts:</b> The EDPRP was filed on March 3, 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. The EDFARP was filed on September 13, 2010, and mailed to Respondent via first class mail and certified mail, return receipt requested. The EDFARP sent by certified mail was returned "unclaimed." The first class mail has not been returned. The EDSARP was filed on October 28, 2010, and mailed to Respondent via first class mail and certified mail, return receipt requested. The EDSARP sent by certified mail was returned "unclaimed." The first class mail has not been returned. Respondent failed to file an answer and failed to request a hearing.</p> <p><b>Current Compliance Status:</b> Respondent has not yet submitted documentation demonstrating compliance with the technical requirements.</p> <p><b>OSI:</b></p> <ol style="list-style-type: none"> <li>Failed to request the initial and final inspection of an on-site sewage facility from the permitting authority [30 TEX. ADMIN. CODE § 285.61(11)].</li> <li>Failed to install a cleanout plug every 50 feet on long runs of pipe from the sewer stub-out to the treatment tank [30 TEX. ADMIN. CODE § 285.32(a)(5)].</li> <li>Failed to disinfect effluent prior to surface application [30 TEX. ADMIN. CODE § 285.33(d)(2)(D)].</li> <li>Failed to meet the minimum required separation distance for surface application with a timer [30 TEX. ADMIN. CODE §§ 285.31(d) and 285.91(10)].</li> </ol>	<p><b>Total Assessed:</b> \$2,479</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$2,479</p> <p>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.</p> <p><b>Compliance History Classifications:</b>  <i>Person/CN – N/A</i>  <i>Site/RN – N/A</i></p> <p><b>Major Source:</b> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 30 days, develop and implement procedures designed to prevent the recurrence of violations 1 through 4.</li> <li>Within 45 days, submit written certification demonstrating compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	24-Oct-2009			
	<b>PCW</b>	31-Aug-2010	<b>Screening</b>	9-Nov-2009	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>					
<b>Respondent</b>	Mark Perkins				
<b>Reg. Ent. Ref. No.</b>	RN105516637				
<b>Facility/Site Region</b>	10-Beaumont	<b>Major/Minor Source</b>	Minor		

<b>CASE INFORMATION</b>					
<b>Enf./Case ID No.</b>	38703	<b>No. of Violations</b>	4		
<b>Docket No.</b>	2009-1857-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>	Evette Alvarado		
		<b>EC's Team</b>	Enforcement Team 1		
<b>Admin. Penalty \$ Limit</b>	<b>Minimum</b>	\$0	<b>Maximum</b>	\$2,500	

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$1,750
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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>	\$87
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<b>Notes</b>	Enhancement recommended for one NOV with violations same or similar as those in this case.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<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	\$642	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$600	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$1,837
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	34.9%	<b>Adjustment</b>	\$642
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	Enhancement recommended for the recovery of avoided cost of compliance associated with violation nos. 1 - 4.
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<b>Final Penalty Amount</b>	\$2,479
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$2,479
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<b>DEFERRAL</b>	0.0%	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.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	\$2,479
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Screening Date 9-Nov-2009

Docket No. 2009-1857-OSI-E

PCW

Respondent Mark Perkins

Policy Revision 2 (September 2002)

Case ID No. 38703

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105516637

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Evette Alvarado

### 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 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) 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

Enhancement recommended for one NOV with violations same or similar as those in this case.

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

Screening Date 9-Nov-2009

Docket No. 2009-1857-OSI-E

PCW

Respondent Mark Perkins

Policy Revision 2 (September 2002)

Case ID No. 38703

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105516637

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Evette Alvarado

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 285.61(11)

Violation Description

Failed to request the initial and final inspection of an on-site sewage facility ("OSSF") from the permitting authority, as documented during a record review conducted on September 25, 2009. Specifically, the OSSF was installed in June 2008 and the Respondent has yet to request a final inspection from the Beaumont Regional Office.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor
			x	

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 1 Number of violation days 45

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$250

One single event is recommended based on documentation of the violation during the record review of September 25, 2009.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

Notes

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

Violation Subtotal \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$107

Violation Final Penalty Total \$354

This violation Final Assessed Penalty (adjusted for limits) \$354

## Economic Benefit Worksheet

**Respondent** Mark Perkins  
**Case ID No.** 38703  
**Reg. Ent. Reference No.** RN105516637  
**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)				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]	\$100	1-Apr-2009	25-Sep-2009	1.40	\$7	\$100	\$107
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Actual cost avoided by failing to schedule a reinspection of the OSSF, as assessed by the TCEQ. Date required is the date of the initial compliance investigation. Final date is the date of the follow-up investigation.

Approx. Cost of Compliance

\$100

**TOTAL**

\$107

**Screening Date** 9-Nov-2009 **Docket No.** 2009-1857-OSI-E **PCW**  
**Respondent** Mark Perkins *Policy Revision 2 (September 2002)*  
**Case ID No.** 38703 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105516637  
**Media [Statute]** On-Site Sewage Disposal  
**Enf. Coordinator** Evette Alvarado

**Violation Number**   
**Rule Cite(s)**   
**Violation Description**

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="5%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

daily	<input type="text"/>
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"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDP RP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)

**Notes**

**Violation Subtotal**

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

**Estimated EB Amount**  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Mark Perkins  
**Case ID No.** 38703  
**Reg. Ent. Reference No.** RN105516637  
**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
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]	\$100	1-Apr-2009	25-Sep-2009	1.40	\$7	\$100	\$107
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost avoided by failing to install a cleanout plug at the 50 foot interval on the sewer pipe. Date required is the date of the initial compliance investigation. Final date is the date of the follow-up investigation.

Approx. Cost of Compliance

\$100

**TOTAL**

\$107

**Screening Date** 9-Nov-2009 **Docket No.** 2009-1857-OSI-E **PCW**  
**Respondent** Mark Perkins *Policy Revision 2 (September 2002)*  
**Case ID No.** 38703 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105516637  
**Media [Statute]** On-Site Sewage Disposal  
**Enf. Coordinator** Evette Alvarado

**Violation Number**   
**Rule Cite(s)**   
**Violation Description**

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	<input type="text" value="(mark with x)"/>

**Notes**

**Violation Subtotal**

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

**Estimated EB Amount**  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Mark Perkins  
**Case ID No.** 38703  
**Reg. Ent. Reference No.** RN105516637  
**Media** On-Site Sewage Disposal  
**Violation No.** 3

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)				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]	\$300	1-Apr-2009	25-Sep-2009	1.40	\$21	\$300	\$321
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost avoided by failing to provide a means of disinfecting the OSSF's effluent prior to surface application (cost to purchase and install a chlorine tablet feeder). Date required is the date of the initial compliance investigation. Final date is the date of the follow-up investigation.

Approx. Cost of Compliance

\$300

**TOTAL**

\$321

**Screening Date** 9-Nov-2009 **Docket No.** 2009-1857-OSI-E **PCW**  
**Respondent** Mark Perkins *Policy Revision 2 (September 2002)*  
**Case ID No.** 38703 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105516637  
**Media [Statute]** On-Site Sewage Disposal  
**Enf. Coordinator** Evette Alvarado

**Violation Number** 4  
**Rule Cite(s)** 30 Tex. Admin. Code § 285.31(d) and 285.91(10)  
**Violation Description** Failed to meet the minimum required separation distance for surface application with a timer, as documented during a record review conducted September 25, 2009. Specifically, the spray area of two sprinklers used for surface application was closer than 10 feet from the property line.

**Base Penalty** \$2,500

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				5%
	Potential			x	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0%

**Matrix Notes** Human health or the environment will or could be exposed to insignificant amounts of pollutants as a result of this violation.

**Adjustment** \$2,375

\$125

**Violation Events**

Number of Violation Events 1 45 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

**Violation Base Penalty** \$125

One single event is recommended based on documentation of the violation during the record review of September 25, 2009.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

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

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

**Violation Subtotal** \$125

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

**Estimated EB Amount** \$107 **Violation Final Penalty Total** \$177

**This violation Final Assessed Penalty (adjusted for limits)** \$177

## Economic Benefit Worksheet

**Respondent** Mark Perkins  
**Case ID No.** 38703  
**Reg. Ent. Reference No.** RN105516637  
**Media** On-Site Sewage Disposal  
**Violation No.** 4

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)				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]	\$100	1-Apr-2009	25-Sep-2009	1.40	\$7	\$100	\$107
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost avoided by failing to adjust the sprinkler spray area to a minimum of ten feet from the property line. Date required is the date of the initial compliance investigation. Final date is the date of the follow-up investigation.

Approx. Cost of Compliance

\$100

**TOTAL**

\$107

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN601392095 PERKINS, MARK	Classification:	Rating: 3.01
Regulated Entity:	RN105516637 OSSF 9127 FM 139	Classification:	Site Rating:
ID Number(s):	ON SITE SEWAGE FACILITY PERMIT		1519
Location:	9127 FM 139, JOAQUIN, SHELBY CO., TX		
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	November 16, 2009		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	November 16, 2004 to November 16, 2009		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	<u>Evette Alvarado</u>	Phone:	<u>512 - 239 - 2573</u>

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
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 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	04/08/2009	(741837)
2	10/20/2009	(777536)

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

<b>Date:</b>	<b>04/08/2009</b>	<b>(741837)</b>	<b>CN601392095</b>
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 285, SubChapter D 285.32(a)(5)		
Description:	Failure to provide two-way cleanout plugs every 50ft. on long runs of pipe.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 285, SubChapter D 285.33(d)(2)(D)		
Description:	Failure to provide disinfection of effluent before surface application.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 285, SubChapter D 285.31(d)		
Description:	30 TAC Chapter 285, SubChapter I 285.91(10)		
Description:	Failure to provide uniform application of effluent. Sprinklers and other application methods or devices must provide uniform distribution of treated effluent. The application rate must be adjusted to that there is no runoff.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 285, SubChapter F 285.61(11)		
Description:	Failure to request the initial and final inspection from the permitting authority.		

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  
MARK PERKINS;  
RN105516637**

§  
§  
§  
§  
§

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

### **DOCKET NO. 2009-1857-OSI-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Second Amended Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 366, 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 Mark Perkins ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent constructed, installed, altered, and/or repaired an On-Site Sewage Facility ("OSSF"), as defined in 30 TEX. ADMIN. CODE § 285.2(45), at 9127 Farm-to-Market ("FM") 139, Joaquin, Shelby County, Texas (the "Site"). Respondent holds and maintains OSSF Installer Certificate No. OS0001519, issued by the TCEQ on August 25, 2008, which authorizes Respondent to construct, install, alter, and/or repair OSSFs. Therefore, Respondent is subject to TCEQ jurisdiction pursuant to TEX. WATER CODE ch. 37 and TEX. HEALTH & SAFETY CODE § 366.011.
2. During a record review conducted on September 25, 2009, a TCEQ Beaumont Regional Office investigator documented that Respondent:
  - a. Failed to request the initial and final inspection of an on-site sewage facility ("OSSF") from the permitting authority. Specifically, the OSSF was installed in June 2008 and Respondent has yet to request a final inspection from the Beaumont Regional Office;
  - b. Failed to install a cleanout plug every 50 feet on long runs of pipe from the sewer stub-out to the treatment tank. Specifically, the sewer pipe from the house to the aerobic treatment tank was greater than 50 feet in length and a cleanout plug was not installed at the 50 foot interval;
  - c. Failed to disinfect effluent prior to surface application. Specifically, no form of disinfection was noted within the pump tank nor the area around the aerobic system; and

- d. Failed to meet the minimum required separation distance for surface application with a timer. Specifically the spray area of two sprinklers used for surface application was closer than 10 feet from the property line.
3. Respondent received notice of the violations on or about October 25, 2009.
4. 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 Mark Perkins" (the "EDPRP") in the TCEQ Chief Clerk's office on March 3, 2010.
5. By letter dated March 3, 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 wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating Respondent received notice of the EDPRP.
6. The Executive Director filed the "Executive Director's First Amended 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 Mark Perkins" (the "EDFARP") in the TCEQ Chief Clerk's office on September 13, 2010.
7. By letter dated September 13, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDFARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDFARP.
8. The Executive Director filed the "Executive Director's Second Amended 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 Mark Perkins" (the "EDSARP") in the TCEQ Chief Clerk's office on October 28, 2010.
9. By letter dated October 28, 2010, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDSARP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDSARP.
10. More than 20 days have elapsed since Respondent received notice of the EDPRP, the EDFARP, and the EDSARP provided by the Executive Director. Respondent failed to file an answer to either the EDPRP, the EDFARP, or the EDSARP, failed to request a hearing, and failed to schedule a settlement conference.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to the TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 366, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to request the initial and final inspection of an OSSF from the permitting authority, in violation of 30 TEX. ADMIN. CODE § 285.61(11).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to install a cleanout plug every 50 feet on long runs of pipe from the sewer stub-out to the treatment tank, in violation of 30 TEX. ADMIN. CODE § 285.32(a)(5).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to disinfect effluent prior to surface application, in violation of 30 TEX. ADMIN. CODE § 285.33(d)(2)(D).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to meet the minimum required separation distance for surface application with a timer, in violation of 30 TEX. ADMIN. CODE §§ 285.31(d) and 285.91(10).
6. As evidenced by Findings of Fact Nos. 4 and 5, 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).
7. As evidenced by Findings of Fact Nos. 6 and 7, the Executive Director timely served Respondent with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
8. As evidenced by Findings of Fact Nos. 8 and 9, the Executive Director timely served Respondent with proper notice of the EDSARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
9. As evidenced by Finding of Fact No. 10, 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.
10. 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 and the Texas Health and Safety 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.
11. An administrative penalty in the amount of two thousand four hundred seventy-nine dollars (\$2,479.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

12. 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 two thousand four hundred seventy-nine dollars (\$2,479.00) dollars for violations of state statutes and 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. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Mark Perkins; Docket No. 2009-1857-OSI-E" to:

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

3. Respondent shall undertake the following technical requirements:
  - a. Within 30 days after the effective date of this Order, develop and implement procedures designed to prevent the recurrence of the violations in Conclusions of Law Nos. 2 through 5; and
  - b. Within 45 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 3.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 Ordering Provision No. 3.a. 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. Ronald Hebert, Water Section Manager  
Texas Commission on Environmental Quality  
Beaumont Regional Office  
3870 Eastex Fwy.  
Beaumont, Texas 77703-1830

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 Site 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.

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF STEVEN M. FISHBURN**

**STATE OF TEXAS                   §**  
**§**  
**COUNTY OF TRAVIS               §**

“My name is Steven M. Fishburn. 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 Mark Perkins” (the “EDPRP”) was filed with the Office of the Chief Clerk on March 3, 2010.

The EDPRP was mailed to Respondent’s last known address on March 3, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper 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).

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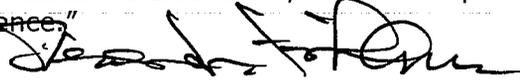
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**Affidavit of Steven M. Fishburn**  
**Page 2**

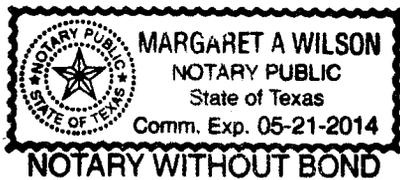
More than 20 days have elapsed since Respondent received notice of the EDPRP, the EDFARP, and the EDSARP. Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."



Steven M. Fishburn, Attorney  
Office of Legal Services, Litigation Division

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

Given under my hand and seal of office this 15<sup>th</sup> day of December, A.D. 2010.



Notary Signature