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EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2011-0240-WQ-E **TCEQ ID:** RN106016371 **CASE NO.:** 41128
RESPONDENT NAME: Lagoon Pumping & Dredging, Inc.

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: Located on the north bank of South Leon River approximately 1,400 feet southwest of the intersection of Farm-to-Market Road 2486 and County Road 240, Comanche County</p> <p>TYPE OF OPERATION: Unauthorized spill site</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: A complaint was received on July 9, 2010 alleging dead fish in the area. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: A complaint was received, but the complainant has not expressed a desire to protest this action or to speak at Agenda.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on May 16, 2011. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney/SEP Coordinator: None TCEQ Enforcement Coordinator: Mr. Thomas Jecha, P.G., Enforcement Division, Enforcement Team 3, MC 169, 512-239-2576; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495 Respondent: Mr. Aaron E. Ross Sr., President, Lagoon Pumping & Dredging, Inc., 4015 South 9th Street, Columbus, Nebraska 68601 Respondent's Attorney: Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation: <input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date(s) of Complaints Relating to this Case: July 9, 2010</p> <p>Date of Investigation Relating to this Case: July 9, 2010</p> <p>Date of NOV/NOE Relating to this Case: February 8, 2011 (NOE)</p> <p>Background Facts: This was a complaint investigation.</p> <p>WATER</p> <p>Failed to prevent the unauthorized discharge of agricultural waste into or adjacent to water in the state. Specifically, during an investigation on July 9, 2010, TCEQ staff observed that an unauthorized discharge of approximately 6,423 gallons of manure sludge from a leak in a diesel booster pump operated by the Respondents at the Site, flowed into the South Leon River killing numerous fish [TEX. WATER CODE § 26.121(a)].</p>	<p>Total Assessed: \$3,750</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Paid to General Revenue: \$3,750</p> <p>Compliance History Classifications: Person/CN – N/A Site/RN – N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> <p>Findings Orders Justification:</p> <p>Environmental receptors have been exposed to pollutants which exceed levels that are protective.</p>	<p>Corrective Actions Taken:</p> <p>The Executive Director recognizes that the Respondents removed and properly disposed of all manure sludge remaining at the Site on July 10, 2010.</p>

Additional ID No(s): N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	31-Jan-2011	Screening	3-Feb-2011	EPA Due	
	PCW	7-Feb-2011				

RESPONDENT/FACILITY INFORMATION			
Respondent	Lagoon Pumping & Dredging, Inc.		
Reg. Ent. Ref. No.	RN106016371		
Facility/Site Region	3-Abilene	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	41128	No. of Violations	1	
Docket No.	2011-0240-WQ-E	Order Type	Findings	
Media Program(s)	Water Quality	Government/Non-Profit	No	
Multi-Media		Enf. Coordinator	Thomas Jecha, P.G.	
		EC's Team	Enforcement Team 3	
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$5,000
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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.

Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes No adjustment for compliance histories.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$1,250
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$0
Approx. Cost of Compliance	\$700

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,750
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount	\$3,750
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,750
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DEFERRAL	0.0% Reduction	Adjustment	\$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 is recommended for Findings Orders.

PAYABLE PENALTY	\$3,750
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Screening Date 3-Feb-2011

Docket No. 2011-0240-WQ-E

PCW

Respondent Lagoon Pumping & Dredging, Inc.

Policy Revision 2 (September 2002)

Case ID No. 41128

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106016371

Media [Statute] Water Quality

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)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No adjustment for compliance histories.

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

Screening Date 3-Feb-2011

Docket No. 2011-0240-WQ-E

PCW

Respondent Lagoon Pumping & Dredging, Inc.

Policy Revision 2 (September 2002)

Case ID No. 41128

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106016371

Media [Statute] Water Quality

Enf. Coordinator Thomas Jecha, P.G.

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a)

Violation Description

Failed to prevent the unauthorized discharge of agricultural waste into or adjacent to water in the state. Specifically, during an investigation on July 9, 2010, TCEQ staff observed that an unauthorized discharge of approximately 6,423 gallons of manure sludge from a leak in a diesel booster pump operated by the Respondents at the Site, flowed into the South Leon River killing numerous fish.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual	x		
Potential			

Percent 50%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to pollutants which exceed protective levels as a result of this violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 1

1 Number of violation days

mark only one with an x

daily	x
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

One daily event is recommended.

Good Faith Efforts to Comply

25.0% Reduction

\$1,250

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

Notes

Compliance was achieved on July 10, 2010.

Violation Subtotal \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$3,750

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

Economic Benefit Worksheet

Respondent Lagoon Pumping & Dredging, Inc.
Case ID No. 41128
Reg. Ent. Reference No. RN106016371
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	\$700	9-Jul-2010	10-Jul-2010	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

Estimated clean up cost. The date required is the investigation date and the final date is the date clean-up was completed.

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

\$700

TOTAL

\$0

Compliance History

Customer/Respondent/Owner-Operator: CN603738063 Lagoon Pumping & Dredging Inc. Classification: Rating:
Regulated ID Number(s): RN106016371 UNAUTHORIZED SPILL SITE Classification: Site Rating:
Location: NORTH BANK OF SOUTH LEON RIVER APPROX 1400 FT SW OF INTERSECTION OF FM 2486 AND CR 240, COMANCHE CO. TX
TCEQ Region: REGION 03 - ABILENE
Date Compliance History Prepared: February 10, 2011
Agency Decision Requiring Compliance Enforcement
Compliance Period: February 07, 2006 to February 07, 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? 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 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.)
(893753)
1 2/1/11
 - 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
LAGOON PUMPING & DREDGING,
INC.
RN106016371**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2011-0240-WQ-E**

At its _____ agenda, the Texas Commission on Environmental Quality (“the Commission” or “TCEQ”) considered this agreement of the parties, resolving an enforcement action regarding Lagoon Pumping & Dredging, Inc. (“the Respondent”) under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that they have certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. 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. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

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

I. FINDINGS OF FACT

1. The Respondent conducted pumping operations at the unauthorized spill site located on the north bank of the South Leon River approximately 1,400 feet southwest of the

intersection of Farm-to-Market Road 2486 and County Road 240 in Comanche County, Texas (the "Site").

2. The Respondent discharged agricultural waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. During an investigation on July 9, 2010, TCEQ staff observed that an unauthorized discharge of approximately 6,423 gallons of manure sludge from a leak in a diesel booster pump operated by the Respondent at the Site, flowed into the South Leon River killing numerous fish.
4. The Respondent received notice of the violations on February 8, 2011.
5. The Executive Director recognizes that the Respondent removed and properly disposed of all manure sludge remaining at the Site on July 10, 2010.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 3, the Respondent failed to prevent the unauthorized discharge of agricultural waste into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against the 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.
4. An administrative penalty in the amount of Three Thousand Seven Hundred Fifty Dollars (\$3,750) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent has paid the Three Thousand Seven Hundred Fifty Dollar (\$3,750) administrative penalty.

III. ORDERING PROVISIONS

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

1. The Respondent is assessed an administrative penalty in the amount of Three Thousand Seven Hundred Fifty Dollars (\$3,750) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Lagoon Pumping & Dredging, Inc., Docket No. 2011-0240-WQ-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. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the operations referenced in this Agreed Order.
3. 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 the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
4. 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.
5. 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.
6. 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.

7. 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

[Signature]
For the Executive Director

Date 5/5/2011

I, the undersigned, have read and understand the attached Agreed Order in the matter of Lagoon Pumping & Dredging Inc. I am authorized to agree to the attached Agreed Order on behalf of Aaron E. Ross II, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, Aaron E. Ross II waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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]
Signature

5/2/11
Date

Aaron Ross SR
Name (Printed or typed)
Authorized Representative of
Lagoon Pumping & Dredging, Inc.

President
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section III, Paragraph 1 of this Agreed Order.