

Executive Summary – Enforcement Matter – Case No. N/A
Jerry D. Penner, OSSF Maintenance Provider License No. MP0001100
RN103664561
Docket No. 2009-0386-OSS-E

Order Type:

Findings Agreed Suspension Order

Findings Order Justification:

Respondent has demonstrated a pattern of disregard for environmental laws

Media:

OSS

Small Business:

Yes

Locations Where Violations Occurred:

28 locations within Ellis County

Type of Operation:

On-Site Sewage Facility Maintenance Provider

Other Significant Matters:

Additional Pending Enforcement Actions: None

Past-Due Penalties: None

Past-Due Fees: None

Other: *This respondent was referred to TCEQ by the Ellis County OSSF Program after the respondent was convicted in the JP Court of Ellis County on 10 counts of failing to submit aerobic treatment unit inspection reports and 18 counts of failing to submit aerobic sewage facility reports.*

Interested Third-Parties: Ellis County OSSF Program

Texas Register Publication Date: August 20, 2010

Comments Received: None

Penalty Information

Total Penalty Assessed: N/A

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: N/A

Total Due to General Revenue: N/A

Payment Plan: N/A

SEP Conditional Offset: N/A

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

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: May 1, 2008; April 30, 2009
Date(s) of NOV(s): N/A
Date(s) of NOE(s): August 29, 2008; June 11, 2009

Violation Information

1. Failed to submit aerobic treatment unit inspection reports to the Authorized Agent [30 TEX. ADMIN. CODE § 285.7(d)(1)(B), TEX. HEALTH & SAFETY CODE § 366.0515, and TEX. WATER CODE §§ 7.1735 and 7.173].
2. Failed to submit the required aerobic sewage facility reports to the Authorized Agent [30 TEX. ADMIN. CODE § 285.64(a)(5)].

Corrective Actions/Technical Requirements

Corrective Action Completed:

Respondent ceased operating in the capacity of an OSSF Maintenance Provider as of December 31, 2010.

Technical Requirements:

1. Immediately, Respondent's OSSF Maintenance Provider License No. MP0001100 shall be suspended for one hundred eighty (180) days; and
2. Immediately upon the expiration of the one hundred eighty (180) day suspension, Respondent shall be placed on probation for a period of eighteen months.

Litigation Information

Date(s) Petition(s) Filed: June 9, 2009
Date(s) Answer(s) Filed: June 25, 2009
SOAH Referral Date: July 30, 2009
Hearing Dates:
Preliminary hearing: October 15, 2009 (waived)
Evidentiary hearing: N/A
Settlement Date: March 27, 2011

Contact Information

TCEQ Attorneys: Rudy Calderon, Litigation Division, MC 175, (512) 239-3400
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

TCEQ Program Contacts: Mike Price, Field Operations Support Division, MC 235, (512) 239- 2150;
Terry Thompson, Office of Permitting and Registration, Licensing Section, MC 178, (512) 239-6095

Respondent: Jerry D. Penner, P.O. Box 732, Red Oak Texas, 75154

Respondent's Attorney: N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF
JERRY D. PENNER,
OSSF MAINTENANCE PROVIDER
LICENSE NO. MP0001100;
RN103664561**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED SUSPENSION ORDER DOCKET NO. 2009-0386-OSS-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), regarding Jerry D. Penner ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 37 and TEX. HEALTH & SAFETY CODE ch. 366. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent presented this Agreed Order to the Commission.

Respondent understands that he has 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, Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement 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 Respondent.

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

FINDINGS OF FACT

1. Respondent holds and maintains On-Site Sewage Facility ("OSSF") Maintenance Provider License No. MP0001100 (expiration date January 31, 2012), which authorizes Respondent to perform maintenance on OSSF systems under executed contracts, and requires Respondent to keep maintenance records and submit maintenance reports to the permitting authority and to the owner of each OSSF for whom Respondent contracts to provide maintenance. OSSF Maintenance Providers must hold a valid registration issued by the TCEQ pursuant to TEX. HEALTH & SAFETY CODE § 366.071, TEX. WATER CODE § 37.003, and 30 TEX. ADMIN. CODE § 30.240. Therefore, Respondent is subject to TCEQ jurisdiction pursuant to TEX. WATER CODE ch. 37 and TEX. HEALTH & SAFETY CODE § 366.011.

2. Ellis County is the Authorized Agent, as defined TEX. HEALTH & SAFETY CODE § 366.002(1), under which Respondent is authorized to work as an OSSF Maintenance Provider. As an Authorized Agent of the TCEQ, Ellis County is charged with the responsibility of enforcing minimum standards for the design, construction, installation, and operation of OSSFs in the area of jurisdiction defined in the Authorized Agent's On-Site Sewage Facility Order pursuant to 30 TEX. ADMIN. CODE § 285.10 and TEX. HEALTH & SAFETY CODE § 366.032.
3. During a record review conducted on May 1, 2008, staff from the TCEQ Occupational Licensing Program and OSSF Regulatory Compliance Division documented that Respondent failed to submit aerobic treatment unit inspection reports to the Authorized Agent. Specifically, Respondent was convicted in the Justice Court of Ellis County on August 9, 2007, of 10 counts of failing to submit the required aerobic sewage facility reports to Ellis County during the 2005-2007 contract period. The reports were not submitted for properties located at: (1) 8020 Mavis Avenue, Waxahachie, Ellis County, Texas; (2) 7050 Pecan Creek Circle, Midlothian, Ellis County, Texas; (3) 7241 Edgerton, Midlothian, Ellis County, Texas; (4) 1415 North Oak Branch Road, Waxahachie, Ellis County, Texas; (5) 215 Corral Road, Waxahachie, Ellis County, Texas; (6) 407 Corral Road, Waxahachie, Ellis County, Texas; (7) 144 Quarter Horse, Waxahachie, Ellis County, Texas; (8) 2349 Springer Road, Red Oak, Ellis County, Texas; (9) 4020 Monroe, Midlothian, Ellis County, Texas; and (10) 217 Magnolia, Midlothian, Ellis County, Texas.
4. During a record review conducted on April 30, 2009, staff from the TCEQ Occupational Licensing Program and OSSF Regulatory Compliance Division documented that Respondent failed to submit the required aerobic sewage facility reports to the Authorized Agent. Specifically, Respondent was convicted in the Justice Court of Ellis County on April 22, 2009, of 18 counts of failing to submit the required aerobic sewage facility reports to Ellis County during the 2008-2009 contract period. The reports were not submitted for properties located at: (1) 4940 Antelope Trail, Midlothian, Ellis County, Texas; (2) 230 Matthews Road, Venus, Ellis County, Texas; (3) 7460 Shiloh Road, Midlothian, Ellis County, Texas; (4) 4860 Monroe Drive, Midlothian, Ellis County, Texas; (5) 3940 Joe Wilson Road, Midlothian, Ellis County, Texas; (6) 5040 Monroe Drive, Midlothian, Ellis County, Texas; (7) 4401 Sunrise Lane, Midlothian, Ellis County, Texas; (8) 3850 Angela Court, Midlothian, Ellis County, Texas; (9) 7241 Edgerton Drive, Midlothian, Ellis County, Texas; (10) 5020 Plainview Road, Midlothian, Ellis County, Texas; (11) 3040 John T Lane, Midlothian, Ellis County, Texas; (12) 5641 Heritage Court, Midlothian, Ellis County, Texas; (13) 971 FM 876, Waxahachie, Ellis County, Texas; (14) 3631 Greathouse Road, Waxahachie, Ellis County, Texas; (15) 2811 S. Hwy 77, Waxahachie, Ellis County, Texas; (16) 785 Richard Road, Waxahachie, Ellis County, Texas; (17) 1186 West Road, Waxahachie, Ellis County, Texas; and (18) 327 Bakers Branch, Waxahachie, Ellis County, Texas.
5. Respondent received notice of the violations listed in Finding of Fact No. 3 on or about September 2, 2008. Respondent received notice of the violations listed in Finding of Fact No. 4 on or about June 11, 2009.
6. The Executive Director recognizes that Respondent ceased operating in the capacity of an OSSF Maintenance Provider as of December 31, 2010.

CONCLUSIONS OF LAW

1. As evidenced by Findings of Fact Nos. 1 and 2, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 37, TEX. HEALTH & SAFETY CODE ch. 366, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Respondent violated 30 TEX. ADMIN. CODE § 285.7(d)(1)(B), TEX. HEALTH & SAFETY CODE § 366.0515, and TEX. WATER CODE §§ 7.1735 and 7.173, by failing to submit aerobic treatment unit inspection reports to the Authorized Agent.
3. As evidenced by Finding of Fact No. 4, Respondent violated 30 TEX. ADMIN. CODE § 285.64(a)(5), by failing to submit the required aerobic sewage facility reports to the Authorized Agent.
4. After notice and hearing the Commission may, for a designated time or permanently, suspend or revoke a license, certificate, or registration issued by the Commission under TEX. HEALTH & SAFETY CODE ch. 366, place on probation a person whose license, certificate, or registration has been suspended, reprimand the holder of a license, certificate, or registration, or refuse to renew or reissue a license, certificate, or registration on any of the following grounds listed in TEX. WATER CODE § 7.303(b):
 - (1) having a record of environmental violations in the preceding five years;
 - (3) demonstrating gross negligence, incompetency, or misconduct while acting as holder of a license, certificate, or registration;
 - (4) making an intentional misstatement or misrepresentation of fact in information required to be maintained or submitted to the commission by the holder of the license, certificate, or registration;
 - (5) failing to keep and transmit records as required by a statute within the commission's jurisdiction or a rule adopted under such a statute; or
 - (8) with respect to a license or registration issued under Chapter 37 of this code or Chapter 366, Health and Safety Code, violating either chapter or a rule adopted under either chapter.
5. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determination necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

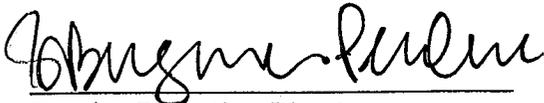
1. Immediately upon the effective date of this Agreed Order, Respondent's OSSF Maintenance Provider License No. MP0001100 shall be suspended for one hundred eighty (180) days, pursuant to TEX. WATER CODE § 7.303(b).
2. Immediately upon the expiration of the one hundred eighty (180) day suspension, Respondent shall be placed on probation for a period of eighteen months, in accordance with TEX. WATER CODE § 7.309.
3. All relief not expressly granted in this Agreed Order is denied.

4. The provisions of this Agreed Order shall apply to and be binding upon Respondent. 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. 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 Agreed Order.
7. 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.
8. 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.
9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

5/13/2011

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 and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this order 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 - Jerry D. Penner

Date

3/27/11