

**CAPTION: Docket No. 2010-1926-EAQ-E. Consideration of an Agreed Order assessing administrative penalties and requiring certain actions of DONNA GOTTWALD, D.D.S., P.C. in Bexar County; RN102838026; for Edwards Aquifer violations pursuant to Tex. Water Code chs. 7 and 26 and the rules of the Texas Commission on Environmental Quality, including specifically 30 Texas Administrative Code ch. 60. (Steve Villatoro, Laurie Eaves)**

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.:** 2010-1926-EAQ-E **TCEQ ID:** RN102838026 **CASE NO.:** 40770  
**RESPONDENT NAME:** DONNA GOTTWALD, D.D.S., P.C.

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input 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	
<b>CASE TYPE:</b>		
<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 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 checked="" type="checkbox"/> EDWARDS AQUIFER
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> Hill Country Dental, 12740 Bandera Road, Helotes, Bexar County</p> <p><b>TYPE OF OPERATION:</b> Commercial rental property</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on May 2, 2011. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> None  <b>TCEQ Enforcement Coordinator:</b> Mr. Steve Villatoro, Enforcement Division, Enforcement Team 1, MC 169, (512) 239-4930; Ms. Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495  <b>Respondent:</b> Ms. Donna Gottwald, Owner, Hill Country Dental, 12740 Bandera Road, Helotes, Texas 78023  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input checked="" type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> June 2, 2010</p> <p><b>Date of NOV/NOE Relating to this Case:</b> October 19, 2010 (NOE)</p> <p><b>Background Facts:</b> This was a routine investigation.</p> <p><b>WATER</b></p> <p>Failed to obtain approval for a modification of a water pollution abatement structure prior to initiating physical and operational modifications to a Water Pollution Abatement Plan ("WPAP"). Specifically, the Respondent removed components of the Site's computer controlled filtration system and was manually operating it [30 TEX. ADMIN. CODE § 213.4(a)(1) and 213.4(j)(1) and WPAP 13-99010401 Standard Conditions No. 2].</p>	<p><b>Total Assessed:</b> \$5,100</p> <p><b>Total Deferred:</b> \$1,020  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><b>Total Paid (Due) to General Revenue:</b> \$125 (remaining \$3,955 due in 35 monthly payments of \$113 each)</p> <p><b>Compliance History Classifications:</b>                      Person/CN - Average                      Site/RN - Average</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>The Executive Director recognizes that on September 27, 2010, the Respondent submitted an application for a modification to an Edwards Aquifer WPAP to the San Antonio Regional Office.</p> <p><b>Ordering Provisions:</b></p> <p>The Order will require the Respondent to:</p> <p>a. Respond completely and adequately to all TCEQ requests for additional information within 30 days of such requests, or by any other deadline specified in writing; and</p> <p>b. Within 60 days after the effective date of this Agreed Order, the Respondent shall submit written certification that an application for a modification to the WPAP was approved by the TCEQ San Antonio Regional Office or the Site's computer controlled filtration system is operated in accordance with the WPAP approved on May 7, 1999.</p>

Additional ID No(s): WPAP 13-99010401



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	25-Oct-2010	<b>Screening</b>	1-Nov-2010	<b>EPA Due</b>	
	<b>PCW</b>	8-Nov-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	DONNA GOTTWALD, D.D.S., P.C.
<b>Reg. Ent. Ref. No.</b>	RN102838026
<b>Facility/Site Region</b>	13-San Antonio
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	40770	<b>No. of Violations</b>	1
<b>Docket No.</b>	2010-1926-EAQ-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Edwards Aquifer	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Steve Villatoro
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

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

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

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

**Compliance History** **2.0%** Enhancement **Subtotals 2, 3, & 7** **\$100**

Notes: Enhancement for one NOV with dissimilar violations.

**Culpability** **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes: The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** **\$0**

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** **\$0**

Total EB Amounts \$323  
 Approx. Cost of Compliance \$6,000  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$5,100**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **0.0%** **Adjustment** **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** **\$5,100**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$5,100**

**DEFERRAL** **20.0%** Reduction **Adjustment** **-\$1,020**

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

Notes:

Deferral offered for expedited settlement.

**PAYABLE PENALTY** **\$4,080**

Screening Date 1-Nov-2010

Docket No. 2010-1926-EAQ-E

PCW

Respondent DONNA GOTTWALD, D.D.S., P.C.

Policy Revision 2 (September 2002)

Case ID No. 40770

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102838026

Media [Statute] Edwards Aquifer

Enf. Coordinator Steve Villatoro

### Compliance History Worksheet

#### >> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 2%

#### >> 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 for one NOV with dissimilar violations.

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

Screening Date 1-Nov-2010

Docket No. 2010-1926-EAQ-E

PCW

Respondent DONNA GOTTWALD, D.D.S., P.C.

Policy Revision 2 (September 2002)

Case ID No. 40770

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN102838026

Media [Statute] Edwards Aquifer

Enf. Coordinator Steve Villatoro

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.4(a)(1) and 213.4(j)(1) and Water Pollution Abatement Plan ("WPAP") 13-99010401 Standard Conditions No. 2

Violation Description

Failed to obtain approval for a modification of a Water Pollution Abatement Plan ("WPAP") prior to initiating physical and operational modifications to a water pollution abatement structure, as documented during an investigation conducted on June 2, 2010. Specifically, the Respondent removed components of the Site's computer controlled filtration system and was manually operating it.

Base Penalty \$10,000

>> 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 \$9,000

\$1,000

Violation Events

Number of Violation Events 5

152 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$5,000

Five monthly events are recommended from the investigation date (June 2, 2010) to the screening date (November 1, 2010).

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 \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$323

Violation Final Penalty Total \$5,100

This violation Final Assessed Penalty (adjusted for limits) \$5,100

## Economic Benefit Worksheet

**Respondent** DONNA GOTTWALD, D.D.S., P.C.  
**Case ID No.** 40770  
**Reg. Ent. Reference No.** RN102838026  
**Media** Edwards Aquifer  
**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	\$6,000	2-Jun-2010	30-Jun-2011	1.08	\$323	n/a	\$323
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and submit a WPAP. Date required is the date the investigation date. Final date is the expected date of compliance.

### 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

\$6,000

**TOTAL**

\$323

# Compliance History Report

Customer/Respondent/Owner-Operator: CN602438327 DONNA GOTTWALD, D.D.S., P.C. Classification: AVERAGE Rating: 3.00  
Regulated Entity: RN102838026 HILL COUNTRY DENTAL Classification: AVERAGE Site Rating: 3.00  
ID Number(s): EDWARDS AQUIFER REGISTRATION 13-99010401  
Location: 12740 Bandera Road, Helotes, Bexar County, Texas  
TCEQ Region: REGION 13 - SAN ANTONIO  
Date Compliance History Prepared: November 01, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: November 1, 2005 to November 1, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Steve Villatoro Phone: (512) 239-4930

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 10/22/2010 (865577)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
Date: 12/05/2008 (637788) CN601439763  
Self NO Classification: Moderate  
Citation: 30 TAC Chapter 213, SubChapter A 213.4(k)  
Description: Failure to comply with a special condition in the WPAP approval letter requiring that all permanent pollution abatement measures shall be operational prior to commencement of commercial operation.  
  
The commercial site is operating, however the permanent BMP at the site is not functioning properly due to lack of the necessary components (bladder valve and filtration canisters).
- 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  
DONNA GOTTWALD, D.D.S., P.C.  
RN102838026**

§  
§  
§  
§  
§

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER DOCKET NO. 2010-1926-EAQ-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 DONNA GOTTWALD, D.D.S., P.C. ("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 appear before the Commission and together stipulate that:

1. The Respondent owns and operates a commercial rental property located at 12740 Bandera Road in Helotes, Bexar County, Texas (the "Site").
2. The Respondent has caused, suffered, allowed or permitted the discharge of any waste or the performance of any activity in violation of TEX. WATER CODE ch. 26 or any rule, permit, or order of the Commission.
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 October 24, 2010.
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 Five Thousand One Hundred Dollars (\$5,100) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Twenty-Five Dollars (\$125) of the administrative penalty and One Thousand Twenty Dollars (\$1,020) 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.

The remaining amount of Three Thousand Nine Hundred Fifty-Five Dollars (\$3,955) of the administrative penalty shall be payable in thirty-five monthly payments of One Hundred Thirteen Dollars (\$113) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order

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 on September 27, 2010, the Respondent submitted an application for a modification to an Edwards Aquifer Water Pollution Abatement Plan ("WPAP") to the San Antonio Regional Office.
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 owner and operator of the Site, the Respondent is alleged to have failed to obtain approval for a modification of a WPAP prior to initiating physical and operational modifications to a water pollution abatement structure, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1) and 213.4(j)(1) and WPAP 13-99010401 Standard Conditions No. 2, as documented during an investigation conducted on June 2, 2010. Specifically, the Respondent removed components of the Site's computer controlled filtration system and was manually operating it.

## 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: DONNA GOTTWALD, D.D.S., P.C., Docket No. 2010-1926-EAQ-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. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Respond completely and adequately to all TCEQ requests for additional information within 30 days of such requests, or by any other deadline specified in writing; and
  - b. Within 60 days after the effective date of this Agreed Order, the Respondent shall submit written certification that an application for a modification to the WPAP was approved by the TCEQ San Antonio Regional Office or the Site's computer controlled filtration system is operated in accordance with the WPAP approved on May 7, 1999. The certification shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance, 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 fines and imprisonment for knowing violations."

The certification shall be submitted 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:

Water Section, Manager  
San Antonio Regional Office  
Texas Commission on Environmental Quality  
14250 Judson Road  
San Antonio, Texas 78233-4480

3. 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 Site operations referenced in this Agreed Order.
4. If the 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against 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.

7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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

John Szellin  
For the Executive Director

\_\_\_\_\_  
Date 4/12/2011

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.

Donna Gottwald  
Signature

\_\_\_\_\_  
Date 2-9-11

Donna Gottwald  
Name (Printed or typed)  
Authorized Representative of  
DONNA GOTTWALD, D.D.S., P.C.

\_\_\_\_\_  
Title owner

**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.