

Executive Summary – Enforcement Matter – Case No. 38971
ACE PUMPING & SEPTIC SERVICES, INC.
RN103916227
Docket No. 2010-0060-SLG-E

Order Type:
Agreed Order

Findings Order Justification:
N/A

Media:
SLG

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
North of Farm-to-Market Road 205 and Farm-to-Market Road 2870, Hood County

Type of Operation:
Domestic septage transportation service company

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: June 24, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$12,305

Amount Deferred for Expedited Settlement: N/A

Amount Deferred for Financial Inability to Pay: N/A

Total Paid to General Revenue: \$424

Total Due to General Revenue: \$11,881

Payment Plan: 34 payments of \$339 each and one payment of \$355

SEP Conditional Offset: N/A

Compliance History Classifications:
Person/CN – Average
Site/RN – Average by Default

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: October 19, 2009
Date(s) of NOV(s): N/A
Date(s) of NOE(s): November 30, 2009

Violation Information

Failed to dispose of domestic septage at an authorized facility [30 TEX. ADMIN. CODE § 312.143]

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

Respondent ceased land application of sludge at the BLU Site on October 19, 2009

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: April 23, 2010; January 7, 2011; May 12, 2011
Date Answer(s) Filed: May 14, 2010
SOAH Referral Date: June 18, 2010; February 7, 2011 (re-referral after remand)
Hearing Date(s):
Preliminary hearing: July 29, 2010; March 31, 2011 (waived)
Evidentiary hearing: October 21, 2010 (continued); January 24, 2011 (continued)
Settlement Date: May 27, 2011

Contact Information

TCEQ Attorneys: Stephanie J. Frazee, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Jeremy Escobar, Waste Enforcement Section, (512) 239- 1465

TCEQ Regional Contact: Sid Slocum, Dallas/Fort Worth Regional Office, (817) 588- 5901

Respondent: Wayne Wienecke, President, Ace Pumping & Septic Services, Inc., P.O. Box 1176, Granbury, Texas 76048

Respondent's Attorney: Erich Birch, Birch, Becker & Moorman, L.L.P., 4601 Spicewood Springs Road, Building 4, Suite 101, Austin, Texas 78759



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	7-Dec-2009	Screening	6-Jan-2010	EPA Due	
	PCW	18-Feb-2011				

RESPONDENT/FACILITY INFORMATION	
Respondent	ACE PUMPING & SEPTIC SERVICES, INC.
Reg. Ent. Ref. No.	RN103916227
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	38971	No. of Violations	1
Docket No.	2010-0060-SLG-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jeremy Escobar
		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	\$6,000
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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 due to compliance history.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$1,500
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$7,805	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$7,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$4,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	173.4%	Adjustment	\$7,805
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended adjustments to capture the avoided cost benefit associated with unauthorized disposal violation.

Final Penalty Amount	\$12,305
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$12,305
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DEFERRAL		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: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$12,305
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Screening Date 6-Jan-2010

Docket No. 2010-0060-SLG-E

PCW

Respondent ACE PUMPING & SEPTIC SERVICES, INC.

Policy Revision 2 (September 2002)

Case ID No. 38971

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103916227

Media [Statute] Municipal Solid Waste

Enf. Coordinator Jeremy Escobar

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 <i>(number of NOVs meeting criteria)</i>	0	0%
	Other written NOVs	0	0%
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%

Please Enter Yes or No

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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

No adjustment due to compliance history.

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

Screening Date 6-Jan-2010

Docket No. 2010-0060-SLG-E

PCW

Respondent ACE PUMPING & SEPTIC SERVICES, INC.

Policy Revision 2 (September 2002)

Case ID No. 38971

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN103916227

Media [Statute] Municipal Solid Waste

Enf. Coordinator Jeremy Escobar

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 312.143

Violation Description

Failed to deposit domestic septage at an authorized disposal facility. Specifically, waste manifests indicated that the Respondent disposed of domestic septage at an unauthorized site consisting of approximately 252 acres located in Hood County, north of Farm-to-Market Road 205 and Farm-to-Market Road 2870.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants as a result of the violation.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 6

505 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$6,000

Six quarterly events are recommended from June 1, 2008, the start date indicated on the waste manifests, to October 19, 2009, the date that the land application ceased.

Good Faith Efforts to Comply

25.0% Reduction

\$1,500

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

Notes

The Respondent ceased land application on October 19, 2009.

Violation Subtotal \$4,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$7,805

Violation Final Penalty Total \$12,305

This violation Final Assessed Penalty (adjusted for limits) \$12,305

Economic Benefit Worksheet

Respondent ACE PUMPING & SEPTIC SERVICES, INC.
Case ID No. 38971
Req. Ent. Reference No. RN103916227
Media Municipal Solid Waste
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]	\$7,000	1-Jun-2008	19-Oct-2009	2.30	\$805	\$7,000	\$7,805
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to dispose the domestic septage at a disposal facility authorized to dispose of such waste. Date required is the date the violation was first documented (per Annual Sludge Reports coverage) and final date is the date the Respondent ceased the unauthorized disposal.

Approx. Cost of Compliance

\$7,000

TOTAL

\$7,805

Compliance History Report

Customer/Respondent/Owner-Operator: CN603233248 Ace Pumping & Septic Services, Inc. Classification: AVERAGE Rating: 3.01
Regulated Entity: RN103916227 ACE PUMPING & SEPTIC SERVICES Classification: AVERAGE Site Rating: 3.01
BY DEFAULT

ID Number(s): SLUDGE REGISTRATION 23416
Location: 200 KNOX RD, TOLAR, TX, 75476
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: January 12, 2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: January 06, 2005 to January 06, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Jeremy Escobar Phone: 825 - 3422

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? Yes
3. If Yes, who is the current owner/operator? Ace Pumping & Septic Services, Inc.
4. If Yes, who was/were the prior owner(s)/operator(s)? Granbury Excavating, Inc.
5. When did the change(s) in owner or operator occur? 8/16/2007
6. Rating Date: 9/1/2009 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 11/30/2009 (781426)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
ACE PUMPING & SEPTIC
SERVICES, INC.;
RN103916227**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2010-0060-SLG-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties (the "Agreed Order"), resolving an enforcement action regarding Ace Pumping & Septic Services, Inc. ("Respondent") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Erich Birch of the law firm Birch, Becker & Moorman, L.L.P., appear before the Commission and together stipulate that:

1. Respondent owns and operates a registered domestic septage transportation service company located at 200 Knox Road in Tolar, Hood County, Texas (the "Business"). The Jessie Weinecke Beneficial Land Use ("BLU") site is a sludge disposal site located north of Farm-to-Market Road 205 and Farm-to-Market Road 2870 in Hood County, Texas (the "BLU Site"). The Business and the BLU Site involve the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361 and TCEQ rules.
3. The Executive Director and Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that Respondent is subject to the Commission's jurisdiction.
4. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
5. An administrative penalty in the amount of twelve thousand three hundred five dollars (\$12,305.00) is assessed by the Commission in settlement of the violations alleged in Section II. Respondent paid four hundred twenty-four dollars (\$424.00) of the administrative penalty. The remaining amount of eleven thousand eight hundred eighty-one dollars (\$11,881.00) of the administrative penalty shall be payable in thirty-four (34) monthly payments of three hundred thirty-nine dollars (\$339.00) each and followed by one monthly payment of three hundred fifty-five dollars

(\$355.00). The first monthly payment of three hundred thirty-nine dollars (\$339.00) shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be paid not later than 30 days following the due date of the previous payment. If Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his 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, Respondent's failure to meet the payment schedule of this Agreed Order constitutes the failure by Respondent to timely and satisfactorily comply with all of the terms of this Agreed Order.

6. 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.
7. The Executive Director of the TCEQ and Respondent agree on a settlement of the matters addressed in this Agreed Order, subject to the approval of the Commission.
8. The Executive Director recognizes that Respondent ceased land application of sludge at the BLU Site as of the October 19, 2009 investigation.
9. 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 Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. 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.
11. 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

1. During an investigation conducted on October 19, 2009, a Dallas/Fort Worth Regional Office investigator documented that Respondent violated 30 TEX. ADMIN. CODE § 312.143 by failing to dispose of domestic septage at an authorized facility. Specifically, Respondent disposed of domestic septage at the BLU Site, which was not authorized to accept such wastes.
2. Respondent received notice of the violation on or about December 5, 2009.

III. DENIALS

Respondent generally denies each Allegation in Section II.

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Respondent pay an administrative penalty as set forth in Section I, Paragraph 5, above. The payment of this administrative penalty and 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 considering or requiring corrective actions or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Ace Pumping & Septic Services, Inc., Docket No. 2010-0060-SLG-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

2. All relief not expressly granted in this Agreed Order is denied.
3. The duties and provisions imposed by this Agreed Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Business operations referenced in this Agreed Order.
4. 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. This Agreed Order, issued by the Commission, shall not be admissible against 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,

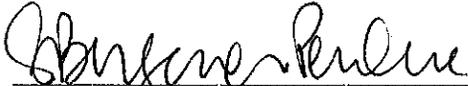
executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or 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. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order 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. 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



For the Executive Director

7/11/2011

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 on behalf of Ace Pumping & Septic Services, Inc., 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 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;
- 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 - Wayne Wienecke, President
Ace Pumping & Septic Services, Inc.

5-27-11

Date