Executive Summary – Enforcement Matter – Case No. 41197
Ernest Yanez Sr.
RN105951313
Docket No. 2011-0293-MLM-E

Order Type:
1660 Agreed Order
Findings Order Justification:
N/A
Media:
MLM, AIR, MSW
Small Business:
Yes
Location(s) Where Violation(s) Occurred:
118 Borden Road, Woodsboro, Refugio County
Type of Operation:
Property
Other Significant Matters:
Additional Pending Enforcement Actions: No
Past-Due Penalties: No
Other: N/A
Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.
Texas Register Publication Date: May 20, 2011
Comments Received: No

Penalty Information

Total Penalty Assessed: $2,313
Amount Deferred for Expedited Settlement: $462
Amount Deferred for Financial Inability to Pay: $0
Total Paid to General Revenue: $151
Total Due to General Revenue: $1,700
Payment Plan: 17 payments of $100 each
SEP Conditional Offset: $0
Name of SEP: N/A
Compliance History Classifications:
Person/CN - Average
Site/RN - Average
Major Source: No
Statutory Limit Adjustment: N/A
Applicable Penalty Policy: September 2002

Executive Summary – Enforcement Matter – Case No. 41197
Ernest Yanez Sr.
RN105951313
Docket No. 2011-0293-MLM-E

Investigation Information

Complaint Date(s): June 17, 2010
Complaint Information: Alleged that solid wastes were burnt and disposed in an open pit on the Respondent's property.
Date(s) of Investigation: December 9, 2010
Date(s) of NOE(s): February 16, 2011

Violation Information

1. Failed to prevent the unauthorized disposal of municiapl solid waste ("MSW"). Specifically, approximately 200 cubic yards of MSW consisting of 45 scrap tires, four scrap vehicles, one scrap camper trailer, aluminum cans, household generated waste, construction waste consisting of scrap metal, used roofing shingles, and scrap air conditioner parts were dipsosed of at the Site [30 TEX. ADMIN. CODE § 330.15(c)].

2. Failed to prohibit the burning of MSW for the purpose of disposal. Specifically, approximately ten cubic yards of MSW was burned without authorization [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

a. Immediately upon the effective date of this Agreed Order, cease burning and disposing of any additional MSW at the Site;

b. Within 30 days, remove all MSW from the Site and dispose of it at an authorized facility; and

c. Within 45 days, submit written certification demonstrating compliance.

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Bridgett Lee, Enforcement Division, Enforcement Team 7, MC 128, (512) 239-2565; Laurie Eaves, Enforcement Division, MC 219, (512) 239-4495
TCEQ SEP Coordinator: N/A
Respondent: Ernest Yanez, Sr., Owner, P.O. Box 935, Woodsboro, Texas 78393
Respondent's Attorney: N/A

Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002) *PCW Revision October 30, 2008*

TCEQ

DATES					
Assigned	22-Feb-2011				
PCW	23-Feb-2011	Screening	22-Feb-2011	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Ernest Yanez Sr.		
Reg. Ent. Ref. No.	RN105951313		
Facility/Site Region	14-Corpus Christi	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	41197	No. of Violations	2
Docket No.	2011-0293-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media	Air	Enf. Coordinator	Bridgett Lee
		EC's Team	Enforcement Team 7

Admin. Penalty $ Limit Minimum $0 Maximum $10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* **$2,000**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History **5.0%** Enhancement *Subtotals 2, 3, & 7* **$100**

Notes: Enhancement for one NOV with same/similar violation.

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 $303
Approx. Cost of Compliance $2,125
*Capped at the Total EB $ Amount

SUM OF SUBTOTALS 1-7 *Final Subtotal* **$2,100**

OTHER FACTORS AS JUSTICE MAY REQUIRE **10.1%** *Adjustment* **$213**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost of compliance associated with violation no. 2.

Final Penalty Amount **$2,313**

STATUTORY LIMIT ADJUSTMENT *Final Assessed Penalty* **$2,313**

DEFERRAL **20.0%** Reduction *Adjustment* **-$462**

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 **$1,851**

Screening Date 22-Feb-2011 **Docket No.** 2011-0293-MLM-E **PCW**

Respondent Ernest Yanez Sr.

Case ID No. 41197

Reg. Ent. Reference No. RN105951313

Media [Statute] Municipal Solid Waste

Enf. Coordinator Bridgett Lee

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

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 (*number of NOVs meeting criteria*)	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (*number of orders meeting criteria*)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (*number of judgements or consent decrees meeting criteria*)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (*number of counts*)	0	0%
Emissions	Chronic excessive emissions events (*number of events*)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were submitted)*	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (*number of audits for which violations were disclosed*)	0	0%

		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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violation.

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

Screening Date	22-Feb-2011	**Docket No.** 2011-0293-MLM-E	**PCW**
Respondent	Ernest Yanez Sr.		*Policy Revision 2 (September 2002)*
Case ID No.	41197		*PCW Revision October 30, 2008*
Reg. Ent. Reference No.	RN105951313		
Media [Statute]	Municipal Solid Waste		
Enf. Coordinator	Bridgett Lee		

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 330.15(c)

Violation Description Failed to prevent the unauthorized disposal of municipal solid waste ("MSW"). Specifically, approximately 200 cubic yards of MSW consisting of 45 scrap tires, four scrap vehicles, one scrap camper trailer, aluminum cans, household generated waste, construction waste consisting of scrap metal, used roofing shingles, and scrap air conditioner parts were disposed of at the Site.

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 which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 75 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended based on documentation of the violation during the December 9, 2010 investigation to the February 22, 2011 screening date.

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 $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $90

Statutory Limit Test

Violation Final Penalty Total $1,157

This violation Final Assessed Penalty (adjusted for limits) $1,157

Economic Benefit Worksheet

Respondent Ernest Yanez Sr.
Case ID No. 41197
Reg. Ent. Reference No. RN105951313
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	$1,912	9-Dec-2010	19-Nov-2011	0.95	$90	n/a	$90
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0
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 DELAYED costs: Estimated cost to remove the remaining MSW and dispose of it at an authorized facility. Date required is the investigation date. Final date is the estimated date of compliance.

Notes for AVOIDED costs:

Approx. Cost of Compliance $1,912

TOTAL $90

Screening Date 22-Feb-2011 **Docket No.** 2011-0293-MLM-E **PCW**

Respondent Ernest Yanez Sr.

Policy Revision 2 (September 2002)

Case ID No. 41197

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105951313

Media [Statute] Municipal Solid Waste

Enf. Coordinator Bridgett Lee

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 111.201 and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to prohibit the burning of MSW for the purpose of disposal. Specifically, approximately ten cubic yards of MSW was burned without authorization.

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 which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1

75 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $1,000

One quarterly event is recommended based on documentation of the violation during the December 9, 2010 investigation to the February 22, 2011 screening date.

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 $1,000

Economic Benefit (EB) for this violation

Estimated EB Amount $213

Statutory Limit Test

Violation Final Penalty Total $1,157

This violation Final Assessed Penalty (adjusted for limits) $1,157

Economic Benefit Worksheet

Respondent Ernest Yanez Sr.
Case ID No. 41197
Reg. Ent. Reference No. RN105951313
Media Municipal Solid Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
	No commas or $						
Delayed Costs							
Equipment				0.00	$0	$0	$0
Buildings				0.00	$0	$0	$0
Other (as needed)				0.00	$0	$0	$0
Engineering/construction				0.00	$0	$0	$0
Land				0.00	$0	n/a	$0
Record Keeping System				0.00	$0	n/a	$0
Training/Sampling				0.00	$0	n/a	$0
Remediation/Disposal				0.00	$0	n/a	$0
Permit Costs				0.00	$0	n/a	$0
Other (as needed)				0.00	$0	n/a	$0

Notes for DELAYED costs

Avoided Costs ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	$0	$0	$0
Personnel				0.00	$0	$0	$0
Inspection/Reporting/Sampling				0.00	$0	$0	$0
Supplies/equipment				0.00	$0	$0	$0
Financial Assurance [2]				0.00	$0	$0	$0
ONE-TIME avoided costs [3]	$213	24-Jun-2010	25-Jun-2010	0.00	$0	$213	$213
Other (as needed)				0.00	$0	$0	$0

Notes for AVOIDED costs: Estimated avoided cost to have properly disposed of the MSW at an authorized facility rather than burning. The Date Required is one day prior to the burning of the waste. The Final Date is the date of the investigation originally documenting the violation.

Approx. Cost of Compliance: $213

TOTAL: $213

Compliance History

Customer/Respondent/Owner-Operator:	CN603689134	Ernest Yanez Sr.	Classification: AVERAGE	Rating: 6.00
Regulated Entity:	RN105951313	118 BORDEN ROAD	Classification: AVERAGE	Site Rating: 6.00
ID Number(s):	MUNICIPAL SOLID WASTE NON		ID NUMBER	UNA455140074

Location: 118 BORDEN ROAD, WOODSBORO, TX, 78393

TCEQ Region: REGION 14 - CORPUS CHRISTI

Date Compliance History Prepared: February 22, 2011

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: February 22, 2006 to February 22, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Bridgett Lee Phone: (512) 239 - 2565

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.)
(886750)
1 02/16/2011

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

Date: 07/22/2010 (829291)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)
Description: Failure to properly dispose of solid waste. Uncorrected Cat B sent to enforcement

Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 111, SubChapter B 111.201
5C THSC Chapter 382 382.085(b)
Description: Failure to comply with the General Prohibition requirements on Outdoor Burning

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	**§**	**BEFORE THE**
ENFORCEMENT ACTION	**§**	
CONCERNING	**§**	**TEXAS COMMISSION ON**
ERNEST YANEZ SR.	**§**	
RN105951313	**§**	**ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2011-0293-MLM-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 Ernest Yanez Sr. ("the Respondent") under the authority of TEX. HEALTH & SAFETY CODE chs. 361 and 382 and TEX. WATER CODE ch. 7. 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 property at 118 Borden Road in Woodsboro, Refugio County, Texas (the "Site").

2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE ch. 382.003(12) and involves or involved the management of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.

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 February 21, 2011.

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 Two Thousand Three Hundred Thirteen Dollars ($2,313) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid One Hundred Fifty-One Dollars ($151) of the administrative penalty and Four Hundred Sixty-Two Dollars ($462) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

   The remaining amount of One Thousand Seven Hundred Dollars ($1,700) of the administrative penalty shall be payable in 17 monthly payments of One Hundred Dollars ($100) 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 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.

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

As owner of the Site, the Respondent is alleged to have:

1. Failed to prevent the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c), as documented during an investigation conducted on December 9, 2010. Specifically, approximately 200 cubic yards of MSW consisting of 45 scrap tires, four scrap vehicles, one scrap camper trailer, aluminum cans, household generated waste, construction waste consisting of scrap metal, used roofing shingles, and scrap air conditioner parts were dipsosed of at the Site.

2. Failed to prohibit the burning of MSW for the purpose of disposal, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b), as documented during an investigation conducted on December 9, 2010. Specifically, approximately ten cubic yards of MSW was burned without authorization.

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: Ernest Yanez Sr., Docket No. 2011-0293-MLM-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. Immediately upon the effective date of this Agreed Order, cease burning and disposing of any additional MSW at the Site;

   b. Within 30 days after the effective date of this Agreed Order, remove all MSW from the Site and dispose of it at an authorized facility; and

c. Within 45 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of 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:

Waste Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5503

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent.

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 Sadler
For the Executive Director

6/10/2011
Date

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.

Ernest Yanez
Signature

04/20/2011
Date

Ernest Yanez Sr.
Name (Printed or typed)
Authorized Representative of
Ernest Yanez Sr.

_____
Title

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.