

ErasmO Garcia

RN105691786

Docket No. 2012-0450-OSS-E

Order Type:

Default Order

Findings Order Justification:

N/A

Media:

OSS

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

123 County Road 409, Brady, McCulloch County

Type of Operation:

on-site sewage facility ("OSSF")

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	\$339.29 (2010-0496-OSS-E)
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date:	September 28, 2012
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Comments Received:	None
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Penalty Information

Total Penalty Assessed:	\$3,900
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Total Paid to General Revenue:	\$0
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Total Due to General Revenue:	\$3,900
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Compliance History Classifications:

Person/CN – N/A

Site/RN – N/A

Major Source:	No
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Statutory Limit Adjustment:	None
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Applicable Penalty Policy:	September 2002
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Investigation Information

Complaint Date(s):	February 11, 2009
Complaint Information:	Alleged that Respondent repaired his failing OSSF without first obtaining the required authorization.

Date(s) of Investigation:	December 19, 2011
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Date(s) of NOV(s):	April 14, 2009
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Date(s) of NOE(s):	February 9, 2012
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Erasmo Garcia
RN105691786
Docket No. 2012-0450-OSS-E

Violation Information

1. Failed to obtain authorization prior to constructing an OSSF [TCEQ Default Order Docket No. 2010-0496-OSS-E, Ordering Provision Nos. 3.a. through 3.e., TEX. HEALTH & SAFETY CODE § 366.051(a), and 30 TEX. ADMIN. CODE § 285.3(b)(1)].
2. Failed to pay the administrative penalty assessed by TCEQ Default Order Docket No. 2010-0496-OSS-E.

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 10 days, submit payment for the administrative penalty assessed by TCEQ Default Order Docket No. 2010-0496-OSS-E, including any associated penalties and interest.
2. Within 30 days:
 - a. Uncover the existing unauthorized OSSF at the Site and notify the TCEQ San Angelo Regional Office to allow on on-site inspection; and
 - b. Complete and submit the required OSSF permit application and application fee.
3. Respondent shall respond completely and adequately, as determined by TCEQ, to any requests for information concerning the permit application, and address any deficiencies identified by the TCEQ San Angelo Regional Office within 30 days of such request or by any other deadline specified in writing by the TCEQ.
4. Within 45 days, submit written certification to demonstrate compliance with Technical Requirements Nos. 1 and 2.
5. Within 75 days, submit written certification that either a permit was obtained for the OSSF at the Site, or that operation of the OSSF has ceased and the OSSF was properly removed or abandoned.

Litigation Information

Date Petition(s) Filed: July 6, 2012

Date Green Card(s) Signed: Unclaimed

Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Joel Cordero, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
James Murphy, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Jill Russell, Enforcement Division, (512) 239- 4564

TCEQ Regional Contact: Christopher Mayben, San Angelo Regional Office, (325) 659-6704

Respondent: Erasmo Garcia, 123 County Road 409, Brady, TX 76825

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	16-Feb-2012	Screening	23-Feb-2012	EPA Due	
	PCW	24-Feb-2012				

RESPONDENT/FACILITY INFORMATION			
Respondent	Erasmo Garcia		
Reg. Ent. Ref. No.	RN105691786		
Facility/Site Region	8-San Angelo	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	43641	No. of Violations	2
Docket No.	2012-0450-OSS-E	Order Type	Findings
Media Program(s)	On-Site Sewage Disposal	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jill Russell
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$3,000
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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	30.0% Enhancement	Subtotals 2, 3, & 7	\$900
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Notes: Enhancement for one NOV with same/similar violations and one order without denial of liability.

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	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$34
 Approx. Cost of Compliance: \$400
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$3,900
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$3,900
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$3,900
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$3,900
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Screening Date 23-Feb-2012

Docket No. 2012-0450-OSS-E

PCW

Respondent Erasmo Garcia

Policy Revision 2 (September 2002)

Case ID No. 43641

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105691786

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Jill Russell

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>)	1	5%
	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	1	25%
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) 30%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations and one order without denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 30%

Screening Date 23-Feb-2012

Docket No. 2012-0450-OSS-E

PCW

Respondent Erasmo Garcia

Policy Revision 2 (September 2002)

Case ID No. 43641

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105691786

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Jill Russell

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 285.3(b)(1) and Texas Health & Safety Code § 366.051(a) and Docket No. 2010-0496-OSS-E Ordering Provisions Nos. 3.a. through 3.e.

Violation Description

Failed to obtain authorization prior to constructing an on-site sewage facility ("OSSF") at 123 County Road 409, Brady, Texas and failed to comply with provisions of Commission Order Docket No. 2010-0496-OSS-E.

Base Penalty \$2,500

>> 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 \$2,250

\$250

Violation Events

Number of Violation Events 12

363 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$3,000

Twelve monthly events are recommended from the February 25, 2011 effective date of the Commission Order to the screening date of February 23, 2012.

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 \$3,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$34

Violation Final Penalty Total \$3,900

This violation Final Assessed Penalty (adjusted for limits) \$3,900

Economic Benefit Worksheet

Respondent Erasmo Garcia
Case ID No. 43641
Reg. Ent. Reference No. RN105691786
Media On-Site Sewage Disposal
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
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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	\$250	25-Feb-2011	12-Nov-2012	1.72	\$21	n/a	\$21
Other (as needed)	\$150	25-Feb-2011	12-Nov-2012	1.72	\$13	n/a	\$13

Notes for DELAYED costs

Estimated cost to submit an application for an OSSF for a single-family dwelling and the cost for planning and materials. Date required is the 2/25/2011 Commission Order effective 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

\$400

TOTAL

\$34

Screening Date 23-Feb-2012

Docket No. 2012-0450-OSS-E

PCW

Respondent Erasmo Garcia

Policy Revision 2 (September 2002)

Case ID No. 43641

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105691786

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Jill Russell

Violation Number 2

Rule Cite(s)

Violation Description Failed to pay the administrative penalty assessed by Commission Order Docket No. 2010-0496-OSS-E.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), Percent (0%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, Percent (0%).

Matrix Notes

Adjustment \$2,500

\$0

Violation Events

Number of Violation Events Number of violation days

Table with frequency options: daily, weekly, monthly, quarterly, semiannual, annual, single event.

Violation Base Penalty \$0

No penalty recommended because penalty and interest will be assessed at the next billing.

Good Faith Efforts to Comply

0.0% Reduction Before NOV NOV to EDPRP/Settlement Offer

\$0

Table with categories: Extraordinary, Ordinary, N/A.

Notes

Violation Subtotal \$0

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$0

Violation Final Penalty Total \$0

This violation Final Assessed Penalty (adjusted for limits) \$0

Economic Benefit Worksheet

Respondent Erasmo Garcia
Case ID No. 43641
Reg. Ent. Reference No. RN105691786
Media On-Site Sewage Disposal
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
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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

Not applicable.

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

Not applicable.

Approx. Cost of Compliance

\$0

TOTAL

\$0

Compliance History Report

Customer/Respondent/Owner-Operator: CN603450149 Garcia, Erasmo Classification: N/A Rating: N/A
Regulated Entity: RN105691786 On Site Sewage Facility (OSSF) Classification: N/A Site Rating: N/A
ID Number(s):
Location: Residence located at 123 County Road 409, Brady, Texas.
Approximately 1.81 miles east of Brady, off East Main Street along Ranch Road 714.
TCEQ Region: REGION 08 SAN ANGELO
Date Compliance History Prepared: February 21, 2012
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: February 21, 2007 to February 21, 2012
CEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Jill Russell Phone: (512) 239-4564

Site Compliance History Components

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

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
Effective Date: 02/25/2011 ADMINORDER 2010 0496 OSS E
Classification: Major
Citation: 30 TAC Chapter 285, SubChapter A 285.3(b)(1)
5B THSC Chapter 366, SubChapter A 366.051(a)
Description: Failure to obtain Authorization to Construct (ATC), prior to altering and or repairing an alleged damaged or failed On Site Sewage Facility (OSSF).
- 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 | 03/12/2010 | (794665) |
| 2 | 02/09/2012 | (983613) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 04/14/2009 (742438)
Self Report? No Classification: Major
Citation: 30 TAC Chapter 285, SubChapter A 285.3(b)(1)
5B THSC Chapter 366, SubChapter A 366.051(a)
Description: Failure to obtain Authorization to Construct (ATC), prior to altering and or repairing an alleged damaged or failed On Site Sewage Facility (OSSF).
- 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
ERASMO GARCIA;
RN105691786**

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§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2012-0450-OSS-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 366, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Erasmo Garcia ("Respondent").

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

FINDINGS OF FACT

1. Respondent constructed, installed, altered, and/or repaired an On-Site Sewage Facility ("OSSF"), as defined in 30 TEX. ADMIN. CODE § 285.2(45), at 123 County Road 409 in Brady, McCulloch County, Texas (the "Site"). Therefore, Respondent is subject to TCEQ jurisdiction pursuant to TEX. HEALTH & SAFETY CODE § 366.011.
2. During an investigation conducted on December 19, 2011, a TCEQ San Angelo Regional Office investigator documented that Respondent:
 - a. Failed to obtain authorization prior to constructing an OSSF; and
 - b. Failed to pay the administrative penalty assessed by TCEQ Default Order Docket No. 2010-0496-OSS-E.
3. Respondent received notice of the violations on or about February 14, 2012.
4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Erasmo Garcia" (the "EDPRP") in the TCEQ Chief Clerk's office on July 6, 2012.
5. By letter dated July 6, 2012, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.

6. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 366 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to obtain authorization prior to constructing an OSSF, in violation of TEX. HEALTH & SAFETY CODE § 366.051(a), 30 TEX. ADMIN. CODE § 285.3(b)(1), and TCEQ Default Order Docket No. 2010-0496-OSS-E Ordering Provision Nos. 3.a. through 3.e.
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to pay the administrative penalty assessed by TCEQ Default Order Docket No. 2010-0496-OSS-E.
4. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2)
5. As evidenced by Finding of Fact No. 6, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of three thousand nine hundred dollars (\$3,900.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of three thousand nine hundred dollars (\$3,900.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here.

2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Erasmo Garcia; Docket No. 2012-0450-OSS-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

3. Respondent shall undertake the following technical requirements:
 - a. Within 10 days after the effective date of this Order, Respondent shall submit payment for the administrative penalty assessed by TCEQ Default Order Docket No. 2010-0496-OSS-E, including associated penalties and interest, with the notation "Re: Erasmo Garcia, FA Account No. 23606146", to the address listed in Ordering Provision No. 2, above.
 - b. Within 30 days after the effective date of this Order, Respondent shall:
 - i. Uncover the existing unauthorized OSSF at the Site and notify the TCEQ San Angelo Regional Office to allow on on-site inspection of the OSSF; and
 - ii. Complete and submit the required OSSF permit application and application fee to the following address:
 - Christopher Mayben, Water Section Manager
Texas Commission on Environmental Quality
San Angelo Regional Office
622 South Oakes, Suite K
San Angelo, Texas 76903-7035
 - c. Respondent shall respond completely and adequately, as determined by TCEQ, to any requests for information concerning the permit application and address any deficiencies identified by the TCEQ San Angelo Regional Office within 30 days of such request or by any other deadline specified in writing by the TCEQ.
 - d. Within 45 days after the effective date of this Order, Respondent shall submit written certification as described in Ordering Provision No. 3.f., below, to demonstrate compliance with Ordering Provisions Nos. 3.a. and 3.b.
 - e. Within 75 days after the effective date of this Order, Respondent shall submit written certification as described in Ordering Provision No. 3.f., below, that either a permit was obtained for the OSSF at the Site, or that operation of the OSSF has ceased and the OSSF was properly removed or abandoned.
 - f. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall 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 fine and imprisonment for knowing violations."

Respondent shall submit the written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions to:

Order Compliance Team
Texas Commission on Environmental Quality
Enforcement Division, MC 149A
P.O. Box 13087
Austin, Texas 78711-3087

and:

Christopher Mayben, Water Section Manager
San Angelo Regional Office
Texas Commission on Environmental Quality
622 South Oakes, Suite K
San Angelo, TX 76903-7035

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
6. If Respondent fails to comply with any of the Ordering Provisions in this 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 Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event 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.
7. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this 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.

8. 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 Order.
9. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
10. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV=T CODE § 2001.144.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JOEL CORDERO

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

§

"My name is Joel Cordero. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Erasmo Garcia" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on July 6, 2012.

The EDPRP was mailed to Respondent's last known address on July 6, 2012, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

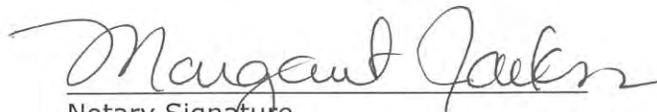
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."



Joel Cordero, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Joel Cordero, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 31st day of August, A.D. 2012.



Notary Signature

