

**Executive Summary – Enforcement Matter – Case No. 33751** Page 1 of 2  
**Westex Capital, LTD.**  
**RN102785805**  
**Docket No. 2010-1491-WQ-E**

**Order Type:**

Findings Agreed Order

**Findings Order Justification:**

Indifference to legal duty based on violation of a previous order.

**Media:**

WQ

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

303 Ebner Street, Boerne, Kendall County

**Type of Operation:**

wholesale storage and distribution of crude petroleum and petroleum products, including liquefied petroleum gas, from bulk liquid storage facilities

**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:** December 9, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$14,520

**Amount Deferred for Financial Inability to Pay:** N/A

**Total Paid to General Revenue:** \$520

**Total Due to General Revenue:** \$14,000

Payment Plan: 35 payments of \$400 each

**SEP Conditional Offset:** N/A

**Compliance History Classifications:**

Person/CN – Average

Site/RN – Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

***Investigation Information***

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** July 27 - 30, 2010  
**Date(s) of NOV(s):** September 5, 2006; October 9, 2009  
**Date(s) of NOE(s):** August 16, 2010

***Violation Information***

Failed to obtain authorization to discharge storm water associated with industrial activities under TPDES MSGP No. TXR050000 and failed to develop and implement a SWP3 [30 TEX. ADMIN. CODE § 281.25(a)(4); 40 C.F.R. § 122.26(c); and Agreed Order Docket No. 2007-0910-WQ-E, Ordering Provision No. 2.a.].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

Respondent applied for a No Exposure Certification for the Facility on November 17, 2010, which was issued on February 24, 2011, with an effective coverage date of November 12, 2010.

**Technical Requirements:**

N/A

***Litigation Information***

**Date Petition(s) Filed:** January 14, 2011  
**Date Answer(s) Filed:** February 4, 2011  
**SOAH Referral Date:** March 14, 2011  
**Hearing Date(s):**  
Preliminary hearing: April 28, 2011 (waived)  
Evidentiary hearing: November 3, 2011 (scheduled)  
**Settlement Date:** October 28, 2011

***Contact Information***

**TCEQ Attorneys:** Peipey Tang, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400

**TCEQ SEP Coordinator:** N/A

**TCEQ Enforcement Coordinator:** J.R.Cao, Water Enforcement Section, (512) 239- 2543

**TCEQ Regional Contact:** Lynn Bumguardner, San Antonio Regional Office, (210) 403-4050

**Respondent:** Anthony Kusenberger, Vice President, Westex Capital, LTD., 307 East 10th Street, Del Rio, Texas 78840

**Respondent's Attorney:** Mark Cannan, Clemens & Spencer, 112 East Pecan Street, Suite 1300 San Antonio, Texas 78205



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	31-Aug-2010	<b>Screening</b>	10-Sep-2010	<b>EPA Due</b>	
	<b>PCW</b>	27-Oct-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	WESTEX CAPITAL, LTD.
<b>Reg. Ent. Ref. No.</b>	RN102785805
<b>Facility/Site Region</b>	13-San Antonio
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	33751	<b>No. of Violations</b>	1
<b>Docket No.</b>	2010-1491-WQ-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	JR Cao
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$11,000
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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.

<b>Compliance History</b>	32.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$3,520
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<b>Notes</b>	Enhancement for two NOV's with same/similar violations, one NOV with a dissimilar violation, and one final agreed order with denial of liability.		
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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<b>Notes</b>	The Respondent does not meet the culpability criteria.		
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$439	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$2,000	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$14,520
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>			
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<b>Final Penalty Amount</b>	\$14,520
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$14,520
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	No deferral is recommended for Findings Orders.		
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<b>PAYABLE PENALTY</b>	\$14,520
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**Screening Date** 10-Sep-2010

**Docket No.** 2010-1491-WQ-E

**PCW**

**Respondent** WESTEX CAPITAL, LTD.

*Policy Revision 2 (September 2002)*

**Case ID No.** 33751

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN102785805

**Media [Statute]** Water Quality

**Enf. Coordinator** JR Cao

### 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> )	2	10%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	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)** 32%

**>> 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 two NOVs with same/similar violations, one NOV with a dissimilar violation, and one final agreed order with denial of liability.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 32%

**Screening Date** 10-Sep-2010  
**Respondent** WESTEX CAPITAL, LTD.  
**Case ID No.** 33751  
**Reg. Ent. Reference No.** RN102785805  
**Media [Statute]** Water Quality  
**Enf. Coordinator** JR Cao

**Docket No.** 2010-1491-WQ-E

**PCW**

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

**Violation Number**

**Rule Cite(s)** 30 Tex. Admin. Code § 281.25(a)(4), 40 Code of Federal Regulations § 122.26(c), and Agreed Order Docket No. 2007-0910-WQ-E, Ordering Provision No. 2.a

**Violation Description**  
 Failed to obtain authorization to discharge storm water associated with industrial activities under Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit ("MSGP") No. TXR050000 and failed to develop and implement a Storm Water Pollution Prevention Plan ("SWP3"), as documented during an investigation conducted on July 27, 2010.

**Base Penalty**

>> **Environmental, Property and Human Health Matrix**

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
		<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	
100% of the rule requirement was not met.					

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

<i>mark only one with an x</i>	daily	<input type="text"/>
	weekly	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="text" value="x"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

**Violation Base Penalty**

Eleven quarterly events are recommended from the effective date of Agreed Order Docket No. 2007-0910-WQ-E (February 18, 2008) through the screening date (September 10, 2010).

**Good Faith Efforts to Comply**

Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	(mark with x)

**Notes** The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal**

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** WESTEX CAPITAL, LTD.  
**Case ID No.** 33751  
**Req. Ent. Reference No.** RN102785805  
**Media** Water Quality  
**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)	\$2,000	18-Feb-2008	8-Apr-2011	3.14	\$21	\$418	\$439
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

The estimated cost of preparing and implementing a storm water pollution prevention plan and submitting a Notice of Intent ("NOI"). Date required is the effective date of the Agreed Order and the final date is the projected 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

\$2,000

**TOTAL**

\$439

# Compliance History Report

Customer/Respondent/Owner-Operator: CN601268402 WESTEX CAPITAL, LTD. Classification: AVERAGE Rating: 3.37  
Regulated Entity: RN102785805 PICO BULK PLANT BOERNE Classification: AVERAGE Site Rating: 18.80  
ID Number(s): PETROLEUM STORAGE TANK REGISTRATION 50930  
Location: 303 EBNER ST, BOERNE, TX, 78006  
TCEQ Region: REGION 13 - SAN ANTONIO  
Date Compliance History Prepared: September 09, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: September 09, 2005 to September 09, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:  
Name: JR Cao Phone: (512) 680-5159

## 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.  
**Effective Date: 02/18/2008 ADMINORDER 2007-0910-WQ-E**  
Classification: Major  
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)  
40 CFR Chapter 122, SubChapter D, PT 122, SubPT B 122.26(c)  
Description: Failure to obtain authorization to discharge storm water associated with an industrial activity.
- 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 | 08/24/2006 | (509851) |
| 2 | 08/31/2006 | (509814) |
| 3 | 10/12/2009 | (721755) |
| 4 | 08/23/2010 | (843626) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |   |                 |                          |
|--------------|---|-----------------|--------------------------|
| <b>Date:</b> | <b>08/24/2006</b>   | <b>(509851)</b> | <b>CN601268402</b>       |
| Self Report? | NO  |                 | Classification: Moderate |
| Citation:    | 2D TWC Chapter 26, SubChapter A 26.121  |                 |                          |
| Description: | Spills occurring during loading and dispensing has left ground and soil stained.  |                 |                          |
| <b>Date:</b> | <b>09/05/2006</b>   | <b>(509814)</b> | <b>CN601268402</b>       |
| Self Report? | NO  |                 | Classification: Moderate |
| Citation:    | 30 TAC Chapter 281, SubChapter A 281.25(a)(4)                                     |                 |                          |
| Description: | Failure to have storm water permit coverage.                                      |                 |                          |
| Self Report? | NO  |                 | Classification: Minor    |
| Citation:    | 30 TAC Chapter 281, SubChapter A 281.25(a)(4)                                     |                 |                          |
| Description: | Failure to have an SWP3.  |                 |                          |
| Self Report? | NO  |                 | Classification: Minor    |
| Citation:    | 30 TAC Chapter 281, SubChapter A 281.25(a)(4)                                     |                 |                          |
| Description: | Failure to maintain an SWP3 on site for inspection.                               |                 |                          |
| Self Report? | NO  |                 | Classification: Moderate |
| Citation:    | TWC Chapter 26 26.121   |                 |                          |
| Description: | Oil discharged onto the soil in the tank farm area.                               |                 |                          |
| <b>Date:</b> | <b>10/09/2009</b>   | <b>(721755)</b> | <b>CN601268402</b>       |
| Self Report? | NO  |                 | Classification: Moderate |
| Citation:    | 30 TAC Chapter 281, SubChapter A 281.25(a)(4)                                     |                 |                          |
| Description: | Failure to develop and implement a storm water pollution prevention plan (SWPPP). |                 |                          |

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  
WESTEX CAPITAL, LTD.;  
RN102785805**

**§  
§  
§  
§  
§**

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **AGREED ORDER**

**DOCKET NO. 2010-1491-WQ-E**

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 Westex Capital, LTD. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Mark Cannan of the law firm Clemens and Spencer, presented this Agreed Order to the Commission.

Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon Respondent.

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

### **FINDINGS OF FACT**

1. Respondent owns and operates a wholesale business located at 303 Ebner Street in Boerne, Kendall County, Texas (the "Facility") which stores and distributes crude petroleum and petroleum products, including liquefied petroleum gas, from bulk liquid storage facilities. The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5). Respondent has discharged waste from the Facility into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
2. During an investigation conducted on July 27, 2010 through July 30, 2010, a TCEQ San Antonio Regional Office investigator documented that Respondent failed to obtain authorization to discharge storm water associated with industrial activities under Texas Pollutant Discharge Elimination System ("TPDES") Multi-Sector General Permit ("MSGP") No. TXR050000 and failed to develop and implement a Storm Water Pollution Prevention Plan ("SWP3").

3. Respondent received notice of the violation on or about August 21, 2010.
4. The Executive Director recognizes that Respondent applied for a No Exposure Certification for the Facility on November 17, 2010, which was issued on February 24, 2011, with an effective coverage date of November 12, 2010.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to obtain authorization to discharge storm water associated with industrial activities under TPDES MSGP No. TXR050000 and failed to develop and implement a SWP3, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4); 40 C.F.R. § 122.26(c); and Agreed Order Docket No. 2007-0910-WQ-E, Ordering Provision No. 2.a.
3. 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.
4. An administrative penalty in the amount of fourteen thousand five hundred twenty dollars (\$14,520.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Respondent paid five hundred twenty dollars (\$520.00) of the administrative penalty. The remaining amount of fourteen thousand dollars (\$14,000.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of four hundred dollars (\$400.00) each. The first monthly payment 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.

#### **ORDERING PROVISIONS**

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

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 4, above, 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 Agreed Order resolve only the matters set forth by this Agreed Order in this action. 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: Westex Capital, LTD., Docket No. 2010-1491-WQ-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 Facility 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. 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.
7. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail,

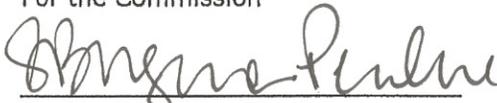
facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission" "owner" "person" "writing" and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

9. 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

1/6/2012

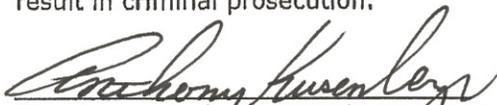
\_\_\_\_\_  
Date

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 Westex Capital, LTD., 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 - Anthony Kusenberger, Vice President  
Westex Capital, LTD.

10-28-11

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Date