

Executive Summary – Enforcement Matter – Case No. 42027
Susan Pape d/b/a 3-S Construction and Shane Pape d/b/a 3-S Construction
RN105137434
Docket No. 2011-1151-MLM-E

Order Type:

Default Order

Findings Order Justification:

N/A

Media:

MLM – MSW, PST, and Edwards Aquifer

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

30204 Smithson Valley Road, San Antonio, Bexar County

Type of Operation:

construction landscape company with on-site equipment maintenance shops, mulch storage, construction debris storage, and soil and rock mining operations

Other Significant Matters:

Additional Pending Enforcement Actions:	2011-1989-MSW-E (RN106233125)
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: February 3, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed:	\$88,275
Total Paid to General Revenue:	\$0
Total Due to General Revenue:	\$88,275

Compliance History Classifications:

Person/CN – Poor (both Respondents)
Site/RN – Poor

Major Source: PCW 1 – Yes; PCW 2 - No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: March 11 - April 20, 2011
Date(s) of NOV(s): August 10, 2010
Date(s) of NOE(s): June 3, 2011 and June 6, 2011

Violation Information

1. Failed to obtain approval of a water pollution abatement plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone [30 TEX. ADMIN. CODE § 213.4(a)(1) and (4)].
2. Failed to prevent the unauthorized disposal of municipal solid waste ("MSW") (approx. 5,380 cu/yd of mulch and approx. 370 cu/yd of miscellaneous debris including bricks, scrap metal, scrap lumber, ground lumber and drywall, and tree limbs) [30 TEX. ADMIN. CODE § 330.15(c)].
3. Failed to register with the Commission, on authorized agency forms, an aboveground storage tank ("AST") in existence on or after September 1, 1989 [30 TEX. ADMIN. CODE § 334.127(a)(2) and TEX. WATER CODE § 26.346(a)].
4. Failed to obtain approval of an AST facility plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone [30 TEX. ADMIN. CODE § 213.4(a)(1) and (4)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
N/A

Technical Requirements:

1. Immediately:
 - a. Cease additional unauthorized waste disposal; and
 - b. Cease regulated activity until an Edwards Aquifer WPAP and an AST facility plan have been approved by the TCEQ San Antonio Regional Office.
2. Within 30 days:
 - a. Submit an administratively complete application for a WPAP and an AST facility plan for review and approval;
 - b. Submit a registration to indicate the ownership and operational status of the ASTs; and
 - c. Remove and properly dispose of the mulch from the Facility.
3. Respondents shall respond completely and adequately to all TCEQ requests for additional information regarding the application for a WPAP and an AST facility plan within 30 days of such requests or by any other deadline specified in writing by TCEQ.
4. Within 60 days, submit written certification to demonstrate that approval of the WPAP and AST facility plan has been obtained.
5. Within 90 days, remove all MSW from the Facility and dispose of it at an authorized facility.
6. Submit written certification to demonstrate compliance:
 - a. Within 15 days for Technical Requirement No. 1;
 - b. Within 45 days for Technical Requirement No. 2;
 - c. 105 days for Technical Requirement No. 5.

Executive Summary – Enforcement Matter – Case No. 42027
Susan Pape d/b/a 3-S Construction and Shane Pape d/b/a 3-S Construction
RN105137434
Docket No. 2011-1151-MLM-E

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Litigation Information

Date Petition(s) Filed: November 21, 2011

Date(s) Green Card(s) Signed: Unclaimed

Date(s) Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Peipey Tang, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Amy Swanholm, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Cheryl Thompson, Air Enforcement Section, (817) 588-5886

TCEQ Regional Contact: Lynn Bumguardner, Water Section Manager and Joel Anderson, Waste Section Manager, San Antonio Regional Office, (210) 403-4050

Respondent: Susan Pape and Shane Pape, 108 Greg Drive, Boerne, Texas 78006

Respondent's Attorney: N/A

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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	6-Jun-2011	Screening	20-Jun-2011	EPA Due	
	PCW	18-Nov-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	Susan Pape d/b/a 3-S Construction and Shane Pape d/b/a 3-S Construction	
Reg. Ent. Ref. No.	RN105137434	
Facility/Site Region	13-San Antonio	Major/Minor Source Major

CASE INFORMATION

Enf./Case ID No.	42027	No. of Violations	1
Docket No.	2011-1151-MLM-E	Order Type	1660
Media Program(s)	Edwards Aquifer	Government/Non-Profit	No
Multi-Media	Municipal Solid Waste	Enf. Coordinator	Cheryl Thompson
		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	\$37,500
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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	65.0% Enhancement	Subtotals 2, 3, & 7	\$24,375
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Notes: Enhancement for one agreed order without a denial of liability, one NOV with same/similar violations, and poor performer classification.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondents do 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 \$398
 Approx. Cost of Compliance \$9,000
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$61,875
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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	\$61,875
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$61,875
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DEFERRAL	0.0% 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	\$61,875
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Screening Date 20-Jun-2011

Docket No. 2011-1151-MLM-E

PCW

Respondent Susan Pape d/b/a 3-S Construction and Shane Pa

Policy Revision 2 (September 2002)

Case ID No. 42027

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105137434

Media [Statute] Edwards Aquifer

Enf. Coordinator Cheryl Thompson

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)

Yes

Adjustment Percentage (Subtotal 3) 25%

>> Compliance History Person Classification (Subtotal 7)

Poor Performer

Adjustment Percentage (Subtotal 7) 10%

>> Compliance History Summary

Compliance History Notes

Enhancement for one agreed order without a denial of liability, one NOV with same/similar violations, and poor performer classification.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 65%

Screening Date	20-Jun-2011	Docket No.	2011-1151-MLM-E	PCW
Respondent	Susan Pape d/b/a 3-S Construction and Shane Pape d/b/a 3-S			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	42027			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN105137434			
Media [Statute]	Edwards Aquifer			
Enf. Coordinator	Cheryl Thompson			

Violation Number

Rule Cite(s)

Violation Description

Failed to obtain approval of a water pollution abatement plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, as documented during an investigation conducted on March 11, 2011. Specifically, a 6,000 square foot truck maintenance and storage warehouse, four sheds with a combined square footage of 1,144 square feet, and associated driveways and parking lots have been constructed at the Facility. Storage areas for mulch piles, scrap metal, and construction and demolition debris are on-site. Top soil and gravel mining operations are conducted on a portion of the property. More than five acres have been disturbed by these activities.

Base Penalty

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

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

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent <input type="text" value="25%"/>
<input type="text"/>	x	<input type="text"/>	<input type="text"/>	

Matrix Notes

100% of the rule requirement was not met.

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	x
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Fifteen weekly events are recommended from the March 11, 2011 investigation until case screening on June 20, 2011.

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	x	(mark with x)

Notes

The Respondents 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 Susan Pape d/b/a 3-S Construction and Shane Pape d/b/a 3-S Construction
Case ID No. 42027
Req. Ent. Reference No. RN105137434
Media Violation No. Edwards Aquifer
 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	\$9,000	11-Mar-2011	28-Jan-2012	0.88	\$398	n/a	\$398
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs Estimated cost to prepare and submit a WPAP plan. The date required is the date of the investigation that determined a WPAP had not been obtained by the property owners and the final date is the date the plan is expected to be approved.

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	\$9,000	TOTAL	\$398
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Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	6-Jun-2011	Screening	20-Jun-2011	EPA Due	
	PCW	18-Nov-2011				

RESPONDENT/FACILITY INFORMATION

Respondent	Susan Pape d/b/a/ 3-S Construction and Shane Pape d/b/a 3-S Construction		
Reg. Ent. Ref. No.	RN105137434		
Facility/Site Region	13-San Antonio	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	42027	No. of Violations	3
Docket No.	2011-1151-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media	Petroleum Storage Tank & Edwards Aquifer	Enf. Coordinator	Cheryl Thompson
		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**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes: Enhancement for one agreed order without a denial of liability, one NOV with same/similar violations, and poor performer classification.

Culpability Enhancement **Subtotal 4**

Notes: The Respondents do not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments **Subtotal 5**

Economic Benefit Enhancement* **Subtotal 6**

Total EB Amounts
 Approx. Cost of Compliance *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Screening Date	20-Jun-2011	Docket No.	2011-1151-MLM-E	PCW
Respondent	Susan Pape d/b/a/ 3-S Construction and Shane P;			Policy Revision 2 (September 2002)
Case ID No.	42027			PCW Revision October 30, 2008
Reg. Ent. Reference No.	RN105137434			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Cheryl Thompson			

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)**

Yes	Adjustment Percentage (Subtotal 3) 25%
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>> **Compliance History Person Classification (Subtotal 7)**

Poor Performer	Adjustment Percentage (Subtotal 7) 10%
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>> **Compliance History Summary**

Compliance History Notes	Enhancement for one agreed order without a denial of liability, one NOV with same/similar violations, and poor performer classification.
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Total Adjustment Percentage (Subtotals 2, 3, & 7) 65%

Screening Date	20-Jun-2011	Docket No.	2011-1151-MLM-E	PCW
Respondent	Susan Pape d/b/a/ 3-S Construction and Shane Pape d/b/a 3-ε			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	42027			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN105137434			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Cheryl Thompson			

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Harm			
	Release	Major	Moderate	Minor
	Actual	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>
				Percent <input type="text" value="25%"/>

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>

Matrix Notes

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 checked="" type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/ 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

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 Susan Pape d/b/a/ 3-S Construction and Shane Pape d/b/a 3-S Construction
Case ID No. 42027
Req. Ent. Reference No. RN105137434
Media Violation No. 1 Municipal Solid Waste

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	\$14,250	11-Mar-2011	27-Feb-2012	0.97	\$689	n/a	\$689
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to dispose of 370 cubic yards of MSW (at \$25 per cubic yard) at an authorized facility and an additional estimated cost of \$5,000 to properly remove and dispose of the mulch. The date required is the investigation date and the final date is the estimated 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 \$14,250

TOTAL \$689

Screening Date 20-Jun-2011 **Docket No.** 2011-1151-MLM-E **PCW**
Respondent Susan Pape d/b/a/ 3-S Construction and Shane Pape d/b/a 3-S *Policy Revision 2 (September 2002)*
Case ID No. 42027 *PCW Revision October 30, 2008*
Reg. Ent. Reference No. RN105137434
Media [Statute] Municipal Solid Waste
Enf. Coordinator Cheryl Thompson

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 334.127(a)(2) and Tex. Water Code § 26.346(a)

Violation Description Failed to register with the Commission, on authorized agency forms, an aboveground storage tank ("AST") in existence on or after September 1, 1989. Specifically, two unregistered ASTs are on-site that each have a capacity of 1,100 gallons.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$9,000

\$1,000

Violation Events

Number of Violation Events 2 101 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,000

One single event is recommended for each unregistered AST.

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 Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$2,000

Economic Benefit (EB) for this violation Statutory Limit Test

Estimated EB Amount \$8 **Violation Final Penalty Total** \$3,300

This violation Final Assessed Penalty (adjusted for limits) \$3,300

Economic Benefit Worksheet

Respondent Susan Pape d/b/a/ 3-S Construction and Shane Pape d/b/a 3-S Construction
Case ID No. 42027
Req. Ent. Reference No. RN105137434
Media Violation No. Municipal Solid Waste
 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	\$200	11-Mar-2011	29-Dec-2011	0.80	\$8	n/a	\$8
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare and submit an AST registration. The date required is the date the Respondents were required to register the AST system and the final date is the estimated 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

\$200

TOTAL

\$8

Screening Date	20-Jun-2011	Docket No.	2011-1151-MLM-E	PCW
Respondent	Susan Pape d/b/a/ 3-S Construction and Shane Pape d/b/a 3-S			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	42027			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN105137434			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Cheryl Thompson			

Violation Number

Rule Cite(s)

Violation Description

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

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

mark only one with an x

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input checked="" type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

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

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 Susan Pape d/b/a/ 3-S Construction and Shane Pape d/b/a 3-S Construction
Case ID No. 42027
Req. Ent. Reference No. RN105137434
Media Violation No. Municipal Solid Waste
3

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	\$3,100	11-Mar-2011	28-Jan-2012	0.88	\$137	n/a	\$137
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare and submit an AST plan that includes four ASTs. The date required is the date of the investigation that determined an AST Plan had not been obtained by the property owners and the final date is the date the plan is expected to be approved.

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 \$3,100

TOTAL \$137

Compliance History

Customer/Respondent/Owner-Operator:	CN603281411 PAPE, SUSAN	Classification: POOR	Rating: 386.50
Regulated Entity:	RN105137434 3-S CONSTRUCTION	Classification: POOR	Site Rating: 386.50
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED	ID NUMBER	UNA455130199
	EDWARDS AQUIFER	REGISTRATION	13-11031103

Location: 30204 SMITHSON VALLEY RD, BEXAR CO.
 TCEQ Region: REGION 13 - SAN ANTONIO

Date Compliance History Prepared: June 27, 2011
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: June 27, 2006 to June 27, 2011

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

Name: Thomas Jecha Phone: (512) 239 - 2576

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: **YES**

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: 03/08/2010 **ADMINORDER 2008-0139-MLM-E**

Classification: Moderate

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: Operating without a permit when a permit is required. During investigations on October 2 and 17, 2007 mining, screening and stockpiles of sand/gravel on the 3-S Construction property were observed and documented. A query of the WWC database on October 2, 2007 revealed no Multi-Sector General Storm Water Permit for this site.

Classification: Major

Citation: 30 TAC Chapter 213, SubChapter A 213.4(a)(1)
 Description: Failure to file/receive approval for an Edwards Aquifer Protection Plan prior to initiating a regulated activity.

Classification: Major

Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)
 Description: Processing MSW without proper authorization.

- 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	8/10/2010	(844832)
2	3/23/2011	(907144)
3	6/2/2011	(907257)
4	6/2/2011	(915355)

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

Date: 8/10/2010 **(844832)**

Self Report? NO Classification: Moderate

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: Operating without a permit when a permit is required. During investigations on October 2 and 17, 2007 mining, screening

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 213, SubChapter A 213.4(a)(1)
 Description: Failure to file/receive approval for an Edwards Aquifer Protection Plan prior to initiating a regulated activity.

Self Report? NO Classification: Major

Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)
 Description: Processing MSW without proper authorization.

- 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

Compliance History

Customer/Respondent/Owner-Operator: CN603281429 PAPE, SHANE Classification: POOR Rating: 386.50
 Regulated Entity: RN105137434 3-S CONSTRUCTION Classification: POOR Site Rating: 386.50
 ID Number(s): MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER UNA455130199
 EDWARDS AQUIFER REGISTRATION 13-11031103

Location: 30204 SMITHSON VALLEY RD, BEXAR CO.
 TCEQ Region: REGION 13 - SAN ANTONIO
 Date Compliance History Prepared: June 27, 2011
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: June 27, 2006 to June 27, 2011
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
 Name: Thomas Jecha Phone: (512) 239 - 2576

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: **YES**

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: 03/08/2010 ADMINORDER 2008-0139-MLM-E

Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
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Description: Operating without a permit when a permit is required. During investigations on October 2 and 17, 2007 mining, screening and stockpiles of sand/gravel on the 3-S Construction property were observed and documented. A query of the WWC database on October 2, 2007 revealed no Multi-Sector General Storm Water Permit for this site.

Classification: Major

Citation: 30 TAC Chapter 213, SubChapter A 213.4(a)(1)
 Description: Failure to file/receive approval for an Edwards Aquifer Protection Plan prior to initiating a regulated activity.

Classification: Major

Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)
 Description: Processing MSW without proper authorization.

- 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	8/10/2010	(844832)
2	3/23/2011	(907144)
3	6/2/2011	(907257)
4	6/2/2011	(915355)

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

Date: 8/10/2010 (844832)

Self Report? NO Classification: Moderate

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: Operating without a permit when a permit is required. During investigations on October 2 and 17, 2007 mining, screening

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Citation: 30 TAC Chapter 213, SubChapter A 213.4(a)(1)
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Self Report? NO Classification: Major

Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)
 Description: Processing MSW without proper authorization.

- 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
SUSAN PAPE D/B/A
3-S CONSTRUCTION AND
SHANE PAPE D/B/A
3-S CONSTRUCTION;
RN105137434**

**§
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§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2011-1151-MLM-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 chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the Respondents. The Respondents made the subject of this Order are Susan Pape d/b/a 3-S Construction and Shane Pape d/b/a 3-S Construction ("Respondents").

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

FINDINGS OF FACT

1. Respondents own and operate a construction landscape company with offices and equipment maintenance shops, mulch storage, construction debris storage, and soil and rock mining operations located at 30204 Smithson Valley Road in San Antonio, Bexar County, Texas (the "Facility"). The Facility involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. Respondents have 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 March 11, 2011 through April 20, 2011, a TCEQ San Antonio Regional Office investigator documented that Respondents:
 - a. Failed to obtain approval of a water pollution abatement plan ("WPAP") prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, a 6,000 square foot truck maintenance and storage warehouse, four sheds with a combined square footage of 1,144 square feet, and associated driveways and parking lots have been constructed at the Facility. Storage areas for mulch piles, scrap metal, and construction and demolition debris are on-site. Top soil and gravel mining operations are conducted on a portion of the property. More than five acres have been disturbed by these activities;
 - b. Failed to prevent the unauthorized disposal of municipal solid waste ("MSW") at the Facility. Specifically, Respondents disposed of approximately 5,380

cubic yards of mulch and approximately 370 cubic yards of miscellaneous debris on-site including bricks, scrap metal, scrap lumber, ground lumber and drywall, and tree limbs;

- c. Failed to register with the Commission, on authorized agency forms, an aboveground storage tank ("AST") in existence on or after September 1, 1989. Specifically, two unregistered ASTs are on-site that each have a capacity of 1,100 gallons; and
 - d. Failed to obtain approval of an AST facility plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone. Specifically, four ASTs are located on the Facility.
3. Respondents received notice of the violations alleged in Findings of Fact Nos. 2.a. and 2.d. on or about June 8, 2011. Respondents received notice of the violations alleged in Findings of Fact Nos. 2.b. and 2.c. on or about June 11, 2011.
 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 Susan Pape d/b/a 3-S Construction and Shane Pape d/b/a 3-S Construction" (the "EDPRP") in the TCEQ Chief Clerk's office on November 21, 2011.
 5. By letter dated November 21, 2011, sent to each Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served each Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRPs sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that each Respondent received notice of the EDPRP.
 6. More than 20 days have elapsed since Respondents received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondents failed to obtain approval of a WPAP prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1) and (4).
3. As evidenced by Finding of Fact No. 2.b., Respondents failed to prevent the unauthorized disposal of MSW at the Facility, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
4. As evidenced by Finding of Fact No. 2.c., Respondents failed to register with the Commission, on authorized agency forms, an AST in existence on or after September 1, 1989, in violation of 30 TEX. ADMIN. CODE § 334.127(a)(2) and TEX. WATER CODE § 26.346(a).

5. As evidenced by Finding of Fact No. 2.d., Respondents failed to obtain approval of an AST facility plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1) and (4).
4. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondents 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, Respondents 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 Respondents 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 Respondents 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 eighty-eight thousand two hundred seventy-five dollars (\$88,275.00) 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. Respondents are assessed an administrative penalty in the amount of eighty-eight thousand two hundred seventy-five dollars (\$88,275.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' 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: Susan Pape d/b/a 3-S Construction and Shane Pape d/b/a 3-S Construction; Docket No. 2011-1151-MLM-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. Respondents shall undertake the following technical requirements:
- a. Immediately upon the effective date of this Order, Respondents shall:
 - i. Cease any additional unauthorized waste disposal; and
 - ii. Cease any regulated activity until an Edwards Aquifer WPAP and an AST facility plan have been approved by the TCEQ San Antonio Regional Office.
 - b. Within 15 days after the effective date of this Order, Respondents shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 3.i., below, to demonstrate compliance with Ordering Provision No. 3.a.;
 - c. Within 30 days after the effective date of this Order, Respondents shall:
 - i. Submit an administratively complete application for a WPAP and an AST facility plan for review and approval to:

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

with a copy to:

Order Compliance Team
Enforcement Division, MC 219
Texas Commission on Environmental Quality
P. O. Box 13087
Austin, Texas 78711-3087
 - ii. Submit a registration to indicate the ownership and operational status of the ASTs on-site, in accordance with 30 TEX. ADMIN. CODE § 334.127 to:

Registration and Reporting Section
Permitting & Registration Support Division, MC129
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087
 - iii. Remove and properly dispose of the mulch from the Facility.
 - d. Within 45 days after the effective date of this Order, Respondents shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 3.i., below, to demonstrate compliance with Ordering Provision No. 3.c.;

- e. Respondents shall respond completely and adequately to all TCEQ requests for additional information regarding the application for a WPAP and an AST facility plan within 30 days of such requests or by any other deadline specified in writing by TCEQ;
- f. Within 60 days after the effective date of this Order, Respondents shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 3.i., below, to demonstrate that approval for a WPAP and AST facility plan has been obtained;
- g. Within 90 days after the effective date of this Order, Respondents shall remove all MSW from the Facility and dispose of the waste at an authorized facility; and
- h. Within 105 days after the effective date of this Order, Respondents shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 3.i., below, to demonstrate compliance with Ordering Provision No. 3.g.
- i. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, 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."

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:

Joel Anderson, Waste Section Manager
Lynn Bumguardner, Water Section Manager
San Antonio Regional Office
Texas Commission on Environmental Quality
14250 Judson Road
San Antonio, Texas 78233-4480

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. If Respondents fail 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, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive 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 Respondents if the Executive Director determines that Respondents have 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 PEIPEY TANG

STATE OF TEXAS

§

COUNTY OF TRAVIS

§

§

"My name is Peipey Tang. 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 Susan Pape d/b/a 3-S Construction and Shane Pape d/b/a 3-S Construction" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on November 21, 2011.

The EDPRP was mailed to each Respondent's last known address on November 21, 2011, 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 each Respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

Peipey Tang
Peipey Tang, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 17th day of Jan, A.D. 2012.

Cheryl Arredondo
Notary Signature

