

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 32440  
ESTRUBERTO FLORES JR  
RN105109151  
Docket No. 2010-1898-MSW-E

**Order Type:**

Default Order (SOAH preliminary hearing)

**Findings Order Justification:**

N/A

**Media:**

MSW

**Small Business:**

N/A

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

Approximately one quarter mile north of the intersection of Western Road and Farm-to-Market Road 1924 (legal description: Texas Gardens LT 31 BLK 2 10.0 AC) in Palmview, Hidalgo County.

**Type of Operation:**

caliche pit

**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:** August 3, 2012

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$3,125

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$3,125

**Compliance History Classifications:**

Person/CN – Not yet rated  
Site/RN – Not yet rated

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2011

**Investigation Information**

**Complaint Date(s):** N/A

**Date(s) of Investigation:** September 15, 2010

**Date(s) of NOV(s):** November 5, 2009

**Date(s) of NOE(s):** October 7, 2010

**Violation Information**

Failed to prevent the unauthorized disposal of municipal solid waste ("MSW") (approx. 2,016 cu/yds of brush, yard waste, rubbish, construction and demolition waste, scrap tires, and wood) [30 TEX. ADMIN. CODE § 330.15(c)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**

None

**Technical Requirements:**

1. Immediately, cease accepting and/or disposing any additional waste at the Facility;
2. Within 30 days, remove all MSW from the Facility and dispose of it at an authorized facility; and
3. Within 45 days, submit written certification demonstrating compliance.

**Litigation Information**

**Date Petition(s) Filed:** February 9, 2011; October 10, 2011

**Date Answer(s) Filed:** June 1, 2011

**SOAH Referral Date:** July 18, 2011

**Hearing Date(s):**

Preliminary hearing: September 1, 2011 (abated for amended petition; defaulted)

Evidentiary hearing: N/A

**Contact Information**

**TCEQ Attorneys:** Anna Treadwell, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
Amy Swanholm, Office of Public Interest Counsel, (512) 239-6823

**TCEQ Enforcement Coordinator:** Andrea Park, Enforcement Division, (512) 239-4575

**TCEQ Regional Contact:** Jaime A. Garza, Harlingen Regional Office, (956) 430-6030

**Respondent:** Estruberto Flores, Jr., 353 North Bentsen Palm Drive, Mission, Texas 78573

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	8-Nov-2010	<b>Screening</b>	19-Nov-2010	<b>EPA Due</b>	
	<b>PCW</b>	23-May-2012				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Estruberto Flores Jr.		
<b>Reg. Ent. Ref. No.</b>	RN105109151		
<b>Facility/Site Region</b>	15-Harlingen	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	32440	<b>No. of Violations</b>	1
<b>Docket No.</b>	2010-1898-MSW-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Andrea Park
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit</b>	Minimum \$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$2,500
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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.

<b>Compliance History</b>	25.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$625
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Notes: Enhancement for one NOV with same/similar violation and a prior order containing a denial of liability.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondents do not meet the culpability criteria.

<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: \$2,297  
 Approx. Cost of Compliance: \$19,473  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$3,125
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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.

Notes:

<b>Final Penalty Amount</b>	\$3,125
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$3,125
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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.)

Notes: Deferral not offered for non-expedited settlement.

<b>PAYABLE PENALTY</b>	\$3,125
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**Screening Date** 19-Nov-2010

**Docket No.** 2010-1898-MSW-E

**PCW**

**Respondent** Estruberto Flores Jr.

*Policy Revision 2 (September 2002)*

**Case ID No.** 32440

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN105109151

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** Andrea Park

### 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> )	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)** 25%

**>> Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

**>> Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

**>> Compliance History Summary**

**Compliance History Notes**

Enhancement for one NOV with same/similar violation and a prior order containing a denial of liability.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 25%

Screening Date 19-Nov-2010

Docket No. 2010-1898-MSW-E

PCW

Respondent Estruberto Flores Jr.

Policy Revision 2 (September 2002)

Case ID No. 32440

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105109151

Media [Statute] Municipal Solid Waste

Enf. Coordinator Andrea Park

Violation Number 1

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

Violation Description Failed to prevent the unauthorized disposal of municipal solid waste ("MSW"). Specifically, during the September 15, 2010 investigation, the investigator documented 2,016 cubic yards of MSW at the site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		x		25%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment will or could be exposed to significant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 65 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	x
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended from the September 15, 2010 investigation date to the November 19, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

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

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

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$2,297

Violation Final Penalty Total \$3,125

This violation Final Assessed Penalty (adjusted for limits) \$3,125

## Economic Benefit Worksheet

**Respondent** Estruberto Flores Jr.  
**Case ID No.** 32440  
**Req. Ent. Reference No.** RN105109151  
**Media** Municipal Solid Waste  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

### Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$19,473	15-Sep-2010	23-Jan-2013	2.36	\$2,297	n/a	\$2,297

Notes for DELAYED costs

Estimated cost to dispose of approximately 2,016 cubic yards of MSW at an authorized facility. 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

\$19,473

**TOTAL**

\$2,297

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603780859 Flores, Estuberto Jr Classification: AVERAGE Rating: 12.00  
Regulated Entity: RN105109151 LOS BETOS CALICHE PIT Classification: AVERAGE Site Rating: 12.00  
ID Number(s): MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER 455150152  
Location: PROPERTY ID: R298536, LEGAL DESCRIPTION: TEXAN GARDENS LT 31 BLK 2 10.0 AC  
TCEQ Region: REGION 15 - HARLINGEN  
Date Compliance History Prepared: November 30, 2010  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: November 30, 2005 to November 30, 2010  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Andrea Park Phone: (512) 239 - 4575

## 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. If **YES**, when did the change(s) in owner or operator occur? N/A
6. Rating Date: N/A 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: 10/25/2007 ADMINORDER 2007-0273-MSW-E**  
Classification: Moderate  
Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)  
Description: Failure to not prevent, cause, suffer, allow or permit the collection, storage, transportation, processing, or disposal of municipal solid waste, in violation of the Texas Health and Safety Code, or any regulations, rules, permit, license, or order of the commission at an unauthorized disposal site.
- 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 | 12/29/2006 | (514389) |
| 2 | 11/23/2009 | (743569) |
| 3 | 11/1/2010  | (863398) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
**Date: 11/5/2009 (743569) CN603121021**  
Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)  
Description: Failure to not prevent, cause, suffer, allow or permit the collection, storage, transportation, processing, or disposal of municipal solid waste, in violation of the Texas Health and Safety Code, or any regulations, rules, permit, license, or order of the commission at an unauthorized disposal site.
- 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  
ESTRUBERTO FLORES JR.;  
RN105109151**

**§  
§  
§  
§  
§**

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2010-1898-MSW-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEX. WATER CODE ch. 7, 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 respondent. The respondent made the subject of this Order is Estruberto Flores Jr. ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns and operates a caliche pit located approximately one quarter mile north of the intersection of Western Road and Farm-to-Market Road 1924 (legal description: Texas Gardens LT 31 BLK 2 10.0 AC) in Palmview, Hidalgo County, Texas (the "Facility"). The Facility involves the management and/or the disposal of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on September 15, 2010, a TCEQ Harlingen Regional Office investigator documented that Respondent failed to prevent the unauthorized disposal of MSW. Specifically, the investigator documented 2,016 cubic yards of MSW at the Facility.
3. Respondent received notice of the violation on or about October 13, 2010.
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 Estruberto Flores Jr. and Humberto Jimenez Jr. d/b/a LOS BETOS CALICHE PIT, L.L.C."<sup>1</sup> (the "EDPRP") in the TCEQ Chief Clerk's office on February 9, 2011.
5. Respondent filed an answer requesting a hearing on June 2, 2011, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on July 18, 2011.

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<sup>1</sup> Humberto Jimenez Jr. d/b/a Los Betos Caliche Pit, L.L.C. was Non-Suited and dropped from the case because Humberto Jimenez no longer owned or operated the Facility at the time of the investigation, and Los Betos Caliche Pit, L.L.C.'s existence was forfeited on March 30, 2007.

6. On August 1, 2011, the TCEQ Chief Clerk mailed notice of the September 1, 2011, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.
7. On September 1, 2011, the Administrative Law Judge ("ALJ") convened the preliminary hearing. Respondent failed to appear, and the Executive Director requested that the matter be dismissed from the SOAH Docket and remanded to the Executive Director so that a Default Order may be entered by the Commission.
8. Pursuant to SOAH Order No. 1, Denying Request for Remand, issued on September 7, 2011, the Executive Director filed the "Executive Director's First Amended 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 Estruberto Flores Jr." (the "EDFARP") in the TCEQ Chief Clerk's office on October 10, 2011, for the sole purpose of removing Humberto Jimenez Jr. d/b/a LOS BETOS CALICHE PIT, L.L.C. as a respondent in this matter. Otherwise, the information contained in the EDFARP is identical to the information contained in the EDPRP.
9. By letter dated October 10, 2011, 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 EDFARP. The United States Postal Service returned the EDFARP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDFARP.
10. On February 24, 2012, the Executive Director filed his Motion for Remand requesting that the matter be dismissed from the SOAH Docket and remanded to the Executive Director so that a Default Order may be entered by the Commission.
11. On April 5, 2012, the ALJ entered a finding that Respondent was served with proper notice of the hearing and remanded the matter to the Executive Director by SOAH Order No. 3, Granting Request for Remand, so that TCEQ may dispose of this case on a default basis.

#### **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. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to prevent the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. As evidenced by Finding of Fact No. 5, Respondent filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(b) and 30 TEX. ADMIN. CODE § 70.109.
4. As evidenced by Finding of Fact No. 6, Respondent was provided proper notice of the preliminary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and

2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.103(a) and (c)(3), 155.401 and 155.501, and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425 and 80.6.

5. As evidenced by Findings of Fact Nos. 7 and 11, Respondent failed to appear for the preliminary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4), TEX. WATER CODE § 7.057, and 1 TEX. ADMIN. CODE § 155.501(d), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 70.106(b).
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 one hundred twenty-five dollars (\$3,125.00) 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 one hundred twenty-five dollars (\$3,125.00) 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: Estruberto Flores Jr.; Docket No. 2010-1898-MSW-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. Immediately upon the effective date of this Order, Respondent shall cease accepting and/or disposing any additional waste at the Facility.

- b. Within 30 days after the effective date of this Order, Respondent shall remove all MSW from the Facility and dispose of it at an authorized facility.
- c. Within 45 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provisions Nos. 3.a. and 3.b. The certification 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 certification 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:

Francisco J. Chavero, Jr., Waste Section Manager  
Harlingen Regional Office  
Texas Commission on Environmental Quality  
1804 W. Jefferson Ave.  
Harlingen TX 78550-5247

- 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 Facility 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 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.

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

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For the Commission

## AFFIDAVIT OF ANNA TREADWELL

**STATE OF TEXAS**

§

**COUNTY OF TRAVIS**

§

§

"My name is Anna Treadwell. 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 Estruberto Flores Jr. and Humberto Jimenez Jr. d/b/a LOS BETOS CALICHE PIT, L.L.C." (the "EDPRP") was filed in the TCEQ Chief Clerk's office on February 9, 2011.

Estruberto Flores Jr. ("Respondent") filed an answer requesting a hearing on June 2, 2011, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on July 18, 2011. On August 1, 2011, the TCEQ Chief Clerk mailed notice of the September 1, 2011, preliminary hearing via certified mail, return receipt requested, and via first class mail, postage prepaid to Respondent.

Respondent failed to appear at the hearing on September 1, 2011. At that hearing, Xavier Guerra, counsel for the Executive Director, requested that the ALJ enter a finding that Respondent was served with proper notice of the hearing and the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(d), which gives an ALJ the authority to remand the case back to the agency for informal disposition on a default basis in accordance with TEX. GOV'T CODE § 2001.056.

Pursuant to SOAH Order No. 1, Denying Request for Remand, issued on September 7, 2011, Mr. Guerra filed the "Executive Director's First Amended 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 Estruberto Flores Jr." (the "EDFARP") in the TCEQ Chief Clerk's office on October 10, 2011, for the sole purpose of removing Humberto Jimenez Jr. d/b/a LOS BETOS CALICHE PIT, L.L.C. as a respondent in this matter. Otherwise, the information contained in the EDFARP is identical to the information contained in the EDPRP.

The EDFARP was mailed to Respondent's last known address on October 10, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDFARP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDFARP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

On February 24, 2012, Mr. Guerra filed the Executive Director's Motion for Remand requesting that the matter be dismissed from the SOAH Docket and remanded to the Executive Director so that a Default Order may be entered by the Commission.

The ALJ entered a finding that Respondent was served with proper notice of the hearing and remanded the matter to the Executive Director by SOAH Order No. 3, Granting Request for Remand, issued on April 5, 2012, so that TCEQ may dispose of this case on a default basis."

*Anna Treadwell*

Anna Treadwell, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Anna Treadwell, 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 9<sup>th</sup> day of July, A.D. 2012.

*Margaret Jackson*  
Notary Signature

