

Robert E. Heard, Jr.
RN104093190
Docket No. 2011-1819-MLM-E

Order Type:

Findings Agreed Order

Findings Order Justifications:

1. People or environmental receptors have been exposed to pollutants which exceed levels that are protective; and
2. Absence of management practices designed to ensure compliance.

Media:

MLM – MSW and IHW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

6910 Cadillac Street, Houston, Harris County

Type of Operation:

lead battery servicing business

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:	March 15, 2013
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Comments Received:	None
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Penalty Information

Total Penalty Assessed:	\$10,500
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Total Paid to General Revenue:	\$315
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Total Due to General Revenue:	\$10,185
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Payment Plan: 35 payments of \$291 each	
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SEP Conditional Offset:	N/A
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Compliance History Classifications:

Person/CN – Average	
Site/RN – Average	

Major Source:	No
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Statutory Limit Adjustment:	None
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Applicable Penalty Policy:	September 2002
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Robert E. Heard, Jr.**RN104093190****Docket No. 2011-1819-MLM-E****Investigation Information**

Complaint Date(s): N/A
Date(s) of Investigation: July 27, 2011
Date(s) of NOE(s): September 21, 2011

Violation Information

Failed to prevent the unauthorized discharge of municipal, industrial solid and hazardous waste (soil test results showed lead concentrations of on-site and off-site surface and subsurface soils up to 2,840 parts per million by weight ("ppmw"), which exceeds the lead background concentration of 15 ppmw) [TEX. WATER CODE § 26.266, and 30 TEX. ADMIN. CODE §§ 330.15(c) and 335.4].

Corrective Actions/Technical Requirements**Corrective Action(s) Completed:**

Respondent took samples of the soil at the Facility, and the contaminated soil was excavated and removed as of September 26, 2012.

Technical Requirements:

N/A

Litigation Information

Date Petition(s) Filed: October 30, 2012
Date Answer(s) Filed: November 19, 2012
SOAH Referral Date: January 2, 2013
Hearing Date(s):
Preliminary Hearing: February 14, 2013 (scheduled)
Evidentiary Hearing: N/A
Settlement Date: February 13, 2013

Contact Information

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

TCEQ SEP Coordinator: N/A

TCEQ Enforcement Coordinator: Mike Pace, Enforcement Division, (817) 588-5933

TCEQ Regional Contact: Jason Ybarra, Houston Regional Office, (713) 767-3500

Respondent Contact: Robert E. Heard, Jr., 335 Milliam Morton Drive, Richmond, Texas 77406

Respondent's Attorney: Robert E. "Robin" Morse, III, Crain, Caton & James, P.C.,
1401 McKinney, Suite 1700, Houston, Texas 77010



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	23-Sep-2011	Screening	24-Sep-2011	EPA Due	
	PCW	13-Aug-2012				

RESPONDENT/FACILITY INFORMATION	
Respondent	Robert E. Heard, Jr.
Reg. Ent. Ref. No.	RN104093190
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	42707	No. of Violations	1
Docket No.	2011-1819-MLM-E	Order Type	Findings
Media Program(s)	Industrial and Hazardous Waste	Government/Non-Profit	No
Multi-Media	Municipal Solid Waste	Enf. Coordinator	Mike Pace
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$10,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	5.0% Enhancement	Subtotals 2, 3, & 7	\$500
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Notes: Enhancement for one NOV with same/similar violations.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$375
Approx. Cost of Compliance	\$10,000

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$10,500
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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 \$10,500

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$10,500
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$10,500
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Screening Date 24-Sep-2011

Docket No. 2011-1819-MLM-E

PCW

Respondent Robert E. Heard, Jr.

Policy Revision 2 (September 2002)

Case ID No. 42707

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104093190

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Mike Pace

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	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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations.

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

Screening Date 24-Sep-2011

Docket No. 2011-1819-MLM-E

PCW

Respondent Robert E. Heard, Jr.

Policy Revision 2 (September 2002)

Case ID No. 42707

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104093190

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Mike Pace

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 330.15(c), 335.4 and Tex. Water Code § 26.266

Violation Description Failed to prevent the unauthorized discharge of industrial solid and hazardous waste. Specifically, a TCEQ investigator documented, based on soil test results, lead concentrations of on-site and off-site surface and subsurface soils up to 2,840 parts per million by weight ("ppmw") which exceeded the lead background concentration of 15 ppmw.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (50%).

>> Programmatic Matrix

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

Matrix Notes Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 2 59 Number of violation days

Table for event frequency: daily, weekly, monthly (marked with x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$10,000

Two monthly events are recommended based on documentation of the violation during the July 27, 2011 record review to the September 24, 2011 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x), and reduction categories (Before NOV, NOV to EDPRP/Settlement Offer).

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

Violation Subtotal \$10,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$375

Violation Final Penalty Total \$10,500

This violation Final Assessed Penalty (adjusted for limits) \$10,500

Economic Benefit Worksheet

Respondent Robert E. Heard, Jr.
Case ID No. 42707
Reg. Ent. Reference No. RN104093190
Media Industrial and Hazardous 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	\$10,000	27-Jul-2011	26-Apr-2012	0.75	\$375	n/a	\$375
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

Estimated cost to take soil samples and properly dispose of the contaminated soil at an authorized facility. The date required is the record review date and the final date is the estimated compliance date.

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

\$10,000

TOTAL

\$375

Compliance History

Customer/Respondent/Owner-Operator: CN603959123 Heard, Robert E. Jr. Classification: AVERAGE Rating: 2.50
Regulated Entity: RN104093190 Texas Industrial Battery Classification: AVERAGE Site Rating: 2.50

ID Number(s): INDUSTRIAL AND HAZARDOUS WASTE NONPERMITTED ID NUMBER F2068
INDUSTRIAL AND HAZARDOUS WASTE EPA ID TXR000080105

Location: 6910 CADILLAC ST, HOUSTON, TX, 77021
TCEQ Region: REGION 12 - HOUSTON

Date Compliance History Prepared: October 25, 2011
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: September 30, 2006 to September 30, 2011

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
Name: Mike Pace Phone: (817) 588-5933

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: 9/1/2011 Repeat Violator: NO

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
N/A
- B. Any criminal convictions of the state of Texas and the federal government.
N/A
- C. Chronic excessive emissions events.
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 11/22/2010 (878038)
2 09/21/2011 (943505)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
Date: 06/08/2010 (784144) CN603959123
Self Report? NO Classification: Major
Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)
30 TAC Chapter 335, SubChapter A 335.4
TWC Chapter 26, 26.266
Description: The facility failed to take corrective actions for lead contamination of the facility surface and subsurface soils.
- 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
ROBERT E. HEARD, JR.;
RN104093190**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2011-1819-MLM-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 Robert E. Heard, Jr. ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent, represented by Robert E. Morse, III of the law firm Crain, Caton & James, P.C., presented this Agreed Order to the Commission.

Respondent understands that he 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 lead battery servicing business located at 6910 Cadillac Street in Houston, Harris County, Texas (the "Facility"). The Facility involves the management and/or the disposal of municipal, industrial solid and/or hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During a record review conducted on July 27, 2011, a TCEQ Houston Regional Office investigator documented that Respondent failed to prevent the unauthorized discharge of municipal, industrial solid and hazardous waste. Specifically, soil test results showed lead concentrations of on-site and off-site surface and subsurface soils up to 2,840 parts per million by weight ("ppmw"), which exceeds the lead background concentration of 15 ppmw.
3. Respondent received notice of the violation on or about September 26, 2011.
4. The Executive Director recognizes that Respondent took samples of the soil at the Facility, and the contaminated soil was excavated and removed as of September 26, 2012.

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, 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 discharge of municipal, industrial solid, and hazardous waste in violation of TEX. WATER CODE § 26.266, and 30 TEX. ADMIN. CODE §§ 330.15(c) and 335.4.
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 ten thousand five hundred dollars (\$10,500.00) 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 three hundred fifteen dollars (\$315.00) of the administrative penalty. The remaining amount of ten thousand one hundred eighty-five dollars (\$10,185.00) of the administrative penalty shall be payable in thirty-five (35) monthly payments of two hundred ninety-one dollars (\$291.00) 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: Robert E. Heard, Jr., Docket No. 2011-1819-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
2. All relief not expressly granted in this Agreed Order is denied.
3. The provisions of 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

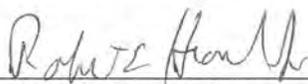
April 8, 2013
Date

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 Robert E. Heard, Jr., 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 Agreed 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.



Robert E. Heard, Jr.

2/13/13
Date