

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 44877  
Dustin Borrego dba Apache Services  
RN105029417  
Docket No. 2012-1756-SLG-E

**Order Type:**

Default Order

**Media:**

SLG

**Small Business:**

Yes

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

14803 Hermit Thrush Drive, Tomball, Montgomery County

**Type of Operation:**

sludge transporter 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:** May 10, 2013

**Comments Received:** None

**Penalty Information**

**Total Penalty Assessed:** \$11,359

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

**Total Due to General Revenue:** \$11,359

**Compliance History Classifications:**

Person/CN –High  
Site/RN – High

**Major Source:** No

**Statutory Limit Adjustment:** None

**Applicable Penalty Policy:** September 2002 (PCW 1); September 2011 (PCW 2)

**Investigation Information**

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** July 20, 2012  
**Date(s) of NOV(s):** N/A  
**Date(s) of NOE(s):** July 26, 2012

**Violation Information**

1. Failed to maintain authorization to transport septic tank waste [30 TEX. ADMIN. CODE § 312.142(d)].
2. Failed to submit to the Executive Director an annual summary of Respondent's activities for the reporting periods ending May 31, 2010, May 21, 2011, and May 31, 2012 [30 TEX. ADMIN. CODE § 312.145(b)(4)].

**Corrective Actions/Technical Requirements**

**Corrective Action(s) Completed:**  
None

**Technical Requirements:**

1. Immediately cease the unauthorized transport of septic tank waste and similar waste until such time as a registration is obtained from the TCEQ.
2. Within 15 days, submit written certification in to demonstrate compliance with Technical Requirement No. 1.
3. Within 30 days, submit the annual summary reports for the reporting periods ending May 31, 2010, May 31, 2011, and May 31, 2012 to:  

Texas Commission on Environmental Quality  
Permitting & Registration Support Division,  
Registration and Reporting Section MC 129  
P.O. Box 13087  
Austin, Texas 78711-3087
4. Within 45 days, submit written certification to demonstrate compliance with Technical Requirement No. 3.

**Litigation Information**

**Date Petition(s) Filed:** January 11, 2013; February 8, 2013  
**Date Green Card(s) Signed:** Unclaimed; Unclaimed  
**Date Answer(s) Filed:** N/A

**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 Enforcement Coordinator:** Steve Villatoro, Enforcement Division, (512) 239-4930  
**TCEQ Regional Contact:** Stephen Smith, Houston Regional Office, (713) 767-3500  
**Respondent:** Dustin Borrego, 14803 Hermit Thrush Drive, Tomball, Texas 77377  
**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>	20-Aug-2012	<b>Screening</b>	20-Aug-2012	<b>EPA Due</b>	
	<b>PCW</b>	12-Dec-2012				

## RESPONDENT/FACILITY INFORMATION

<b>Respondent</b>	Dustin Borrego dba Apache Services		
<b>Reg. Ent. Ref. No.</b>	RN105029417		
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor

## CASE INFORMATION

<b>Enf./Case ID No.</b>	44877	<b>No. of Violations</b>	2
<b>Docket No.</b>	2012-1756-SLG-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Steve Villatoro
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$10,000**

### ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

**Compliance History** **-10.0%** Enhancement **Subtotals 2, 3, & 7** **-\$1,000**

Notes Reduction for High Performer classification.

**Culpability** **No** **0.0%** Enhancement **Subtotal 4** **\$0**

Notes The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** **Subtotal 5** **\$0**

**Economic Benefit** **0.0%** Enhancement\* **Subtotal 6** **\$0**

Total EB Amounts **\$133**  
 Approx. Cost of Compliance **\$350**  
 \*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$9,000**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **12.3%** **Adjustment** **\$1,109**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes Recommended enhancement to capture avoided costs associated with Violation No. 1 and because this is a Default Order, the Executive Director recommends and upward adjustment to the penalty to offset the reduction for compliance history.

**Final Penalty Amount** **\$10,109**

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$10,109**

**DEFERRAL** **0.0%** Reduction **Adjustment** **\$0**

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** **\$10,109**

<b>Screening Date</b>	20-Aug-2012	<b>Docket No.</b>	2012-1756-SLG-E	<b>PCW</b>
<b>Respondent</b>	Dustin Borrego dba Apache Services			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	44877			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN105029417			
<b>Media [Statute]</b>	Water Quality			
<b>Enf. Coordinator</b>	Steve Villatoro			

### 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> )	0	0%
	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)**

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

**Adjustment Percentage (Subtotal 3)**

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

**Adjustment Percentage (Subtotal 7)**

>> **Compliance History Summary**

**Compliance History Notes**

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

<b>Screening Date</b>	20-Aug-2012	<b>Docket No.</b>	2012-1756-SLG-E	<b>PCW</b>
<b>Respondent</b>	Dustin Borrego dba Apache Services		<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b>	44877	<i>PCW Revision October 30, 2008</i>		
<b>Reg. Ent. Reference No.</b>	RN105029417			
<b>Media [Statute]</b>	Water Quality			
<b>Enf. Coordinator</b>	Steve Villatoro			

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

<b>OR</b>	<b>Harm</b>			<b>Percent</b> <input type="text" value="0%"/>	
	<b>Release</b>	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	<b>Percent</b> <input type="text" value="10%"/>
	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

**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 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** Dustin Borrego dba Apache Services  
**Case ID No.** 44877  
**Reg. Ent. Reference No.** RN105029417  
**Media Violation No.** Water Quality  
 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	\$100	20-Jul-2012	31-Mar-2013	0.70	\$3	n/a	\$3
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to apply for and receive authorization to transport septic tank waste and authorize vehicles. Date required is the investigation date and the final date is the anticipated 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]	\$100	31-Aug-2011	20-Jul-2012	1.81	\$9	\$100	\$109
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to apply for and receive authorization to transport septic tank waste. Date required is the date the renewal application was due. Final date is the investigation date.

Approx. Cost of Compliance

\$200

**TOTAL**

\$113

<b>Screening Date</b>	20-Aug-2012	<b>Docket No.</b>	2012-1756-SLG-E	<b>PCW</b>
<b>Respondent</b>	Dustin Borrego dba Apache Services			<i>Policy Revision 2 (September 2002)</i>
<b>Case ID No.</b>	44877			<i>PCW Revision October 30, 2008</i>
<b>Reg. Ent. Reference No.</b>	RN105029417			
<b>Media [Statute]</b>	Water Quality			
<b>Enf. Coordinator</b>	Steve Villatoro			

**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 type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input checked="" type="text" value="x"/>
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** Dustin Borrego dba Apache Services  
**Case ID No.** 44877  
**Reg. Ent. Reference No.** RN105029417  
**Media** Water Quality  
**Violation No.** 2

Percent Interest	Years of Depreciation
5.0	15

**Item Cost**   **Date Required**   **Final Date**   **Yrs**   **Interest Saved**   **Onetime Costs**   **EB Amount**  
**Item Description** 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)	\$150	1-Jul-2010	31-Mar-2013	2.75	\$21	n/a	\$21

**Notes for DELAYED costs** Estimated cost to submit annual summary reports (\$50/report) to the Executive Director. Date required is the date the first report was due. Final date is the expected date of compliance.

### Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal			0.00	\$0	\$0	\$0
Personnel			0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.00	\$0	\$0	\$0
Supplies/equipment			0.00	\$0	\$0	\$0
Financial Assurance [2]			0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0

**Notes for AVOIDED costs**

Approx. Cost of Compliance

**TOTAL**



# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

<b>DATES</b>	<b>Assigned</b>	20-Aug-2012	<b>Screening</b>	20-Aug-2012	<b>EPA Due</b>	
	<b>PCW</b>	12-Dec-2012				

**RESPONDENT/FACILITY INFORMATION**

<b>Respondent</b>	Dustin Borrego dba Apache Services		
<b>Reg. Ent. Ref. No.</b>	RN105029417		
<b>Facility/Site Region</b>	12-Houston	<b>Major/Minor Source</b>	Minor

**CASE INFORMATION**

<b>Enf./Case ID No.</b>	44877	<b>No. of Violations</b>	1
<b>Docket No.</b>	2012-1756-SLG-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Steve Villatoro
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$25,000

**Penalty Calculation Section**

**TOTAL BASE PENALTY (Sum of violation base penalties)** **Subtotal 1** **\$1,250**

**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>	-10.0%	Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>-\$125</b>
Notes	Reduction for High Performer Classification.			
<b>Culpability</b>	No	0.0%	Enhancement	<b>Subtotal 4</b>
Notes	The Respondent does not meet the culpability criteria.			
<b>Good Faith Effort to Comply Total Adjustments</b>			<b>Subtotal 5</b>	<b>\$0</b>
<b>Economic Benefit</b>	0.0%	Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
Total EB Amounts	\$0	*Capped at the Total EB \$ Amount		
Approx. Cost of Compliance	\$0			

**SUM OF SUBTOTALS 1-7** **Final Subtotal** **\$1,125**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** **11.1%** **Adjustment** **\$125**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	Because this is a Default Order, the Executive Director recommends and upward adjustment to the penalty to offset the reduction for compliance history.		
	<b>Final Penalty Amount</b>		<b>\$1,250</b>

**STATUTORY LIMIT ADJUSTMENT** **Final Assessed Penalty** **\$1,250**

**DEFERRAL** **0.0%** Reduction **Adjustment** **\$0**

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.		
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**PAYABLE PENALTY** **\$1,250**

<b>Screening Date</b>	20-Aug-2012	<b>Docket No.</b>	2012-1756-SLG-E	<b>PCW</b>
<b>Respondent</b>	Dustin Borrego dba Apache Services			
<b>Case ID No.</b>	44877			
<b>Reg. Ent. Reference No.</b>	RN105029417			
<b>Media [Statute]</b>	Water Quality			
<b>Enf. Coordinator</b>	Steve Villatoro			

Policy Revision 3 (September 2011)  
PCW Revision August 3, 2011

### 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> )	0	0%
	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%
Please Enter Yes or No			
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)** 0%

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

No

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

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

High Performer

**Adjustment Percentage (Subtotal 7)** -10%

**>> Compliance History Summary**

**Compliance History Notes**

Reduction for High Performer Classification.

**Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7)** -10%

**>> Final Compliance History Adjustment**

**Final Adjustment Percentage \*capped at 100%** -10%

<b>Screening Date</b>	20-Aug-2012	<b>Docket No.</b>	2012-1756-SLG-E	<b>PCW</b>
<b>Respondent</b>	Dustin Borrego dba Apache Services			<i>Policy Revision 3 (September 2011)</i>
<b>Case ID No.</b>	44877			<i>PCW Revision August 3, 2011</i>
<b>Reg. Ent. Reference No.</b>	RN105029417			
<b>Media [Statute]</b>	Water Quality			
<b>Enf. Coordinator</b>	Steve Villatoro			

**Violation Number**

**Rule Cite(s)**

30 Tex. Admin. Code § 312.145(b)(4)

**Violation Description**

Failed to submit to the Executive Director an annual summary of the Respondent's activities for the period of June 1 through May 31 of each year, by July 1, as documented during an investigation conducted on July 20, 2012. Specifically, the Respondent did not submit the annual summary report for the reporting period ending May 31, 2012.

**Base Penalty**

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

OR

Release	Harm		
	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Percent**

>> **Programmatic Matrix**

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

**Percent**

Matrix Notes

100% of the rule requirement was not met.

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

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

**Violation Base Penalty**

One annual event is recommended.

**Good Faith Efforts to Comply**

Reduction

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

Notes

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

**Violation Subtotal**

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

**Statutory Limit Test**

**Estimated EB Amount**

**Violation Final Penalty Total**

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

# Economic Benefit Worksheet

**Respondent** Dustin Borrego dba Apache Services  
**Case ID No.** 44877  
**Reg. Ent. Reference No.** RN105029417  
**Media Violation No.** Water Quality  
 1

Percent Interest	Years of Depreciation
5.0	15

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

### Delayed Costs

Equipment			0.00	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0
Engineering/construction			0.00	\$0	\$0	\$0
Land			0.00	\$0	n/a	\$0
Record Keeping System			0.00	\$0	n/a	\$0
Training/Sampling			0.00	\$0	n/a	\$0
Remediation/Disposal			0.00	\$0	n/a	\$0
Permit Costs			0.00	\$0	n/a	\$0
Other (as needed)			0.00	\$0	n/a	\$0

Notes for DELAYED costs

See economic benefit for Violation No. 2 on accompanying PCW.

### 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

**TOTAL**

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603086331 BORREGO, DUSTIN Classification: HIGH Rating: 0.00  
Regulated Entity: RN105029417 APACHE SERVICES Classification: HIGH Site Rating: 0.00  
ID Number(s):  
Location: 14803 Hermit Thrush Drive, Tomball, Montgomery County, Texas  
TCEQ Region: REGION 12 - HOUSTON  
Date Compliance History Prepared: August 28, 2012  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: August 28, 2007 to August 28, 2012  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Steve Villatoro Phone: (512) 239-4930

## 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 08/03/2012 (1021400)
    - 2 11/26/2007 (600935)
    - 3 04/02/2009 (724022)
    - 4 05/27/2010 (802654)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - 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  
DUSTIN BORREGO DBA  
APACHE SERVICES;  
RN105029417**

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§  
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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2012-1756-SLG-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 respondent. The respondent made the subject of this Order is Dustin Borrego dba Apache Services ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns and operates an unregistered sludge transporter business located at 14803 Hermit Thrush Drive, in Tomball, Montgomery County, Texas (the "Business"). The Business involves the management and/or disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. Respondent transports sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, and/or grease trap waste and is required to be registered with the TCEQ. Therefore, Respondent is subject to TCEQ jurisdiction pursuant to 30 TEX. ADMIN. CODE ch. 312, Subchapter G.
2. During an investigation conducted on July 20, 2012, a TCEQ Houston Regional Office investigator documented that Respondent:
  - a. Failed to maintain authorization to transport septic tank waste. Specifically, Respondent's authorization expired on August 31, 2010, and Respondent transported 12,600 gallons of septic tank waste for disposal between November 16, 2010 and July 17, 2012, without authorization; and
  - b. Failed to submit to the Executive Director an annual summary of Respondent's activities for the period of June 1 through May 31 of each year, by July 1. Specifically, Respondent did not submit the annual summary report for the reporting periods ending May 31, 2010, May 31, 2011 and May 31, 2012.
3. Respondent received notice of the violations on or about July 31, 2012.
4. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Dustin Borrego dba Apache Services" (the "EDPRP") in the TCEQ Chief Clerk's office on January 11, 2013.

5. The EDPRP was mailed to Respondent's last known address on January 11, 2013, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."
6. The Executive Director re-filed the EDPRP in the TCEQ Chief Clerk's office on February 8, 2013.
7. By letter dated February 8, 2013, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
8. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. 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., Respondent failed to maintain authorization to transport septic tank waste, in violation of 30 TEX. ADMIN. CODE § 312.142(d).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to submit to the Executive Director an annual summary of Respondent's activities for the period of June 1 through May 31 of each year, by July 1, in violation of 30 TEX. ADMIN. CODE § 312.145(b)(4).
4. As evidenced by Findings of Fact Nos. 4, 5, 6 and 7, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 8, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of eleven thousand three hundred fifty-nine dollars (\$11,359.00) 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 eleven thousand three hundred fifty-nine dollars (\$11,359.00) 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: Dustin Borrego dba Apache Services; Docket No. 2012-1756-SLG-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 the unauthorized transport of septic tank waste and similar waste until such time as a registration is obtained from the TCEQ, in accordance with 30 TEX. ADMIN. CODE § 312.142.
  - b. Within 15 days after the effective date of this Order, Respondent shall submit written certification in accordance with Ordering Provision No. 3.e., below, to demonstrate compliance with Ordering Provision No. 3.a.
  - c. Within 30 days after the effective date of this Order, Respondent shall submit the annual summary reports for the reporting periods ending May 31, 2010, May 31, 2011, and May 31, 2012 to:

Texas Commission on Environmental Quality  
Permitting & Registration Support Division,  
Registration and Reporting Section MC 129  
P.O. Box 13087  
Austin, Texas 78711-3087
  - d. Within 45 days after the effective date of this Order, Respondent shall submit written certification in accordance with Ordering Provision No. 3.e., below, to demonstrate compliance with Ordering Provision No. 3.c.
  - e. The certifications required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be notarized by a State of Texas Notary Public, and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

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

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

and:

Steve Smith, Water Section Manager  
Houston Regional Office  
Texas Commission on Environmental Quality  
5425 Polk St., Ste. H  
Houston TX 77023-1452

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.
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 JENNIFER COOK**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

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"My name is Jennifer Cook. 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.

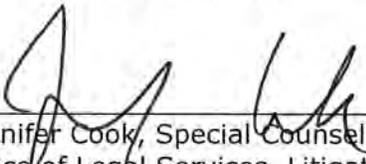
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Dustin Borrego dba Apache Services" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on January 11, 2013.

The EDPRP was mailed to Respondent's last known address on January 11, 2013, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the EDPRP was re-filed in the TCEQ Chief Clerk's office on February 8, 2013.

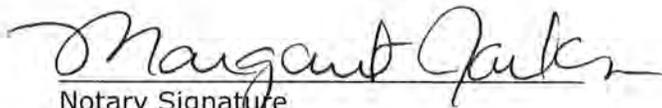
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More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."

  
\_\_\_\_\_  
Jennifer Cook, Special Counsel  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jennifer Cook, 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 12 day of April, A.D. 2013.

  
\_\_\_\_\_  
Notary Signature

