

Brian K. Gay
RN103636262
Docket No. 2013-0391-OSI-E

Order Type:

Default Order

Media:

OSI

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

3930 Live Oak Street in Damon, Brazoria County;
 3686 Haynes Loop, Kountze, Hardin County

Type of Operation:

on-site sewage facility ("OSSF") installer, evaluator, and maintenance provider

Other Significant Matters:

Additional Pending Enforcement Actions:	2012-2104-OSI-E (Default Order)
Past-Due Penalties:	None
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: December 20, 2013

Comments Received: None

Penalty Information

Total Penalty Assessed: \$2,222

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$2,222

Compliance History Classifications:

Person/CN – N/A
 Site/RN – N/A

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: January 8, 2013

Date(s) of NOV(s): October 29, 2012

Date(s) of NOE(s): January 14, 2013

Brian K. Gay
RN103636262
Docket No. 2013-0391-OSI-E

Violation Information

1. Failed to construct the OSSF that was authorized by the permitting authority [TEX. HEALTH & SAFETY CODE § 366.051(a), and 30 TEX. ADMIN. CODE §§ 285.3(a) and 285.61(7)].
2. Failed to provide a slope for the sanitary cleanout pipe at the Site of no less than 1/8 inch of fall per foot of pipe [30 TEX. ADMIN. CODE § 285.32(a)(3)].
3. Failed to install a weather resistant maintenance tag on the OSSF system at the Site [30 TEX. ADMIN. CODE § 285.7(e)(2)].
4. Failed to install the minimum required spray field application area at the Site [30 TEX. ADMIN. CODE § 285.33].
5. Failed to notify the permitting authority at least five working days before the date the OSSF at the Site was ready for inspection and operation [30 TEX. ADMIN. CODE § 285.3(d)(2)].
6. Failed to satisfy the requirements of the maintenance contract with the homeowner of the Site [30 TEX. ADMIN. CODE § 285.64(a)(3)].
7. Failed to ensure that the OSSF piping at the Site is watertight [30 TEX. ADMIN. CODE § 285.32(a)(2)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 30 days:
 - a. Update operational procedures to ensure that all future OSSFs will be constructed properly and in accordance with the approved authorization to construct;
 - b. Develop and implement measures and procedures to ensure that the appropriate permitting authority will be notified at least five working days before the date the OSSF will be ready for inspection; and
 - c. Develop and implement measures and procedures to ensure that all routine maintenance is performed on OSSFs as specified in the maintenance contract.
2. Within 45 days, submit written certification to demonstrate compliance:

Litigation Information

Date Petition(s) Filed: June 19, 2013

Date Green Card(s) Signed: July 10, 2013

Date Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Kari L. Gilbreth, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Vic McWherter, Public Interest Counsel, (512) 239-6363

TCEQ Enforcement Coordinator: Jacquelyn Green, Enforcement Division, (512) 239-2587

TCEQ Regional Contact: Ronald Hebert, Beaumont Regional Office, (409) 898-3838

Respondent: Brian K. Gay, P.O. Box 426, Damon, Texas 77430

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	22-Jan-2013		
	PCW	2-May-2013	Screening	5-Feb-2013
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	Brian K. Gay
Reg. Ent. Ref. No.	RN103636262
Facility/Site Region	10-Beaumont
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	46283	No. of Violations	7
Docket No.	2013-0391-OSI-E	Order Type	1660
Media Program(s)	On-Site Sewage Disposal	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jacquelyn Green
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,750
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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	27.0% Enhancement Subtotals 2, 3, & 7 \$472

Notes: Enhancement for one NOV with same/similar violations, one NOV with dissimilar violations, and one order with denial of liability.

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: \$358
 Approx. Cost of Compliance: \$6,612
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,222
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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	\$2,222
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,222
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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:

Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$2,222
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Screening Date 5-Feb-2013

Docket No. 2013-0391-OSI-E

PCW

Respondent Brian K. Gay

Policy Revision 3 (September 2011)

Case ID No. 46283

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103636262

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Jacquelyn Green

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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	1	20%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 27%

>> Repeat Violator (Subtotal 3)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations, one NOV with dissimilar violations, and one order with denial of liability.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 27%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 27%

Screening Date 5-Feb-2013

Docket No. 2013-0391-OSI-E

PCW

Respondent Brian K. Gay

Policy Revision 3 (September 2011)

Case ID No. 46283

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103636262

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Jacquelyn Green

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 285.3(a) and 285.61(7) and Texas Health & Safety Code § 366.051(a)

Violation Description

Failed to construct the on-site sewage facility ("OSSF") that was authorized by the permitting authority, as documented during an investigation conducted on January 8, 2013. Specifically, the Respondent installed a surface spray application area at the Site instead of a drip irrigation application area. The original permit and design was approved for the installation of a drip irrigation application area.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 1 Number of violation days 28

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$250

One monthly event is recommended from the investigation date (January 8, 2013) to the screening date (February 5, 2013).

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDRP/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 \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$11

Violation Final Penalty Total \$318

This violation Final Assessed Penalty (adjusted for limits) \$318

Economic Benefit Worksheet

Respondent Brian K. Gay
Case ID No. 46283
Reg. Ent. Reference No. RN103636262
Media On-Site Sewage Disposal
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
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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	\$210	18-Oct-2012	17-Nov-2013	1.08	\$11	n/a	\$11
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to submit an Authorization to Construct application to the permitting authority for the OSSF that was installed at the Site. Date required is the initial 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 \$210

TOTAL \$11

Screening Date 5-Feb-2013

Docket No. 2013-0391-OSI-E

PCW

Respondent Brian K. Gay

Policy Revision 3 (September 2011)

Case ID No. 46283

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103636262

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Jacquelyn Green

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 285.32(a)(3)

Violation Description

Failed to provide a slope for the sanitary cleanout pipe of no less than 1/8 inch of fall per foot of pipe. Specifically, there was a total of 4/8 inch of fall from the six foot two-way sanitary clean-out pipe to the septic tank, rather than the required minimum fall of 6/8 inches.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

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 \$4,750

\$250

Violation Events

Number of Violation Events 1

28 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$250

One quarterly event is recommended from the investigation date (January 8, 2013) to the screening date (February 5, 2013).

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 \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$27

Violation Final Penalty Total \$318

This violation Final Assessed Penalty (adjusted for limits) \$318

Economic Benefit Worksheet

Respondent Brian K. Gay
Case ID No. 46283
Reg. Ent. Reference No. RN103636262
Media On-Site Sewage Disposal
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	18-Oct-2012	17-Nov-2013	1.08	\$27	n/a	\$27

Notes for DELAYED costs

Estimated cost to provide a slope of no less than 1/8 inch of fall per foot of sewer pipe. Date required is the initial investigation date, final date is the anticipated 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 \$500

TOTAL \$27

Screening Date 5-Feb-2013

Docket No. 2013-0391-OSI-E

PCW

Respondent Brian K. Gay

Policy Revision 3 (September 2011)

Case ID No. 46283

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103636262

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Jacquelyn Green

Violation Number 3

Rule Cite(s)

30 Tex. Admin. Code § 285.7(e)(2)

Violation Description

Failed to install a weather resistant maintenance tag on the OSSF system.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			5.0%
100% of the rule requirement was not met.					

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 1

28 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$250

One single event is recommended.

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 \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$3

Violation Final Penalty Total \$318

This violation Final Assessed Penalty (adjusted for limits) \$318

Economic Benefit Worksheet

Respondent Brian K. Gay
Case ID No. 46283
Reg. Ent. Reference No. RN103636262
Media On-Site Sewage Disposal
Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$52	18-Oct-2012	17-Nov-2013	1.08	\$3	n/a	\$3

Notes for DELAYED costs
 Estimated cost to install a weather resistant maintenance tag on the OSSF system. Date required is the initial investigation date, final date is the anticipated 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	\$52	TOTAL	\$3
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Screening Date 5-Feb-2013

Docket No. 2013-0391-OSI-E

PCW

Respondent Brian K. Gay

Policy Revision 3 (September 2011)

Case ID No. 46283

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103636262

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Jacquelyn Green

Violation Number 4

Rule Cite(s)

30 Tex. Admin. Code § 285.33

Violation Description

Failed to install the minimum required spray field application area. Specifically, the two spray heads that were installed had a total of 2,180 square feet of application area rather than the required 6,857 square feet.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				5.0%
	Potential		x		

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0.0%

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 \$4,750

\$250

Violation Events

Number of Violation Events 1 Number of violation days 28

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

Violation Base Penalty \$250

One quarterly event is recommended from the investigation date (January 8, 2013) to the screening date (February 5, 2013).

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 \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$271

Violation Final Penalty Total \$318

This violation Final Assessed Penalty (adjusted for limits) \$318

Economic Benefit Worksheet

Respondent Brian K. Gay
Case ID No. 46283
Reg. Ent. Reference No. RN103636262
Media On-Site Sewage Disposal
Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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)	\$5,000	18-Oct-2012	17-Nov-2013	1.08	\$271	n/a	\$271

Notes for DELAYED costs

Estimated cost to provide the minimum required separation distance. Date required is the initial investigation date, final date is the anticipated 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

\$5,000

TOTAL

\$271

Screening Date 5-Feb-2013

Docket No. 2013-0391-OSI-E

PCW

Respondent Brian K. Gay

Policy Revision 3 (September 2011)

Case ID No. 46283

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103636262

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Jacquelyn Green

Violation Number 5

Rule Cite(s)

30 Tex. Admin. Code § 285.3(d)(2)

Violation Description

Failed to notify the permitting authority at least five working days before the date the OSSF will be ready for inspection and operation. Specifically, the Respondent did not notify the TCEQ Beaumont Regional Office at least five working days before the date that the OSSF would be ready for inspection.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 1

28 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$250

One single event is recommended.

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 \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$1

Violation Final Penalty Total \$318

This violation Final Assessed Penalty (adjusted for limits) \$318

Economic Benefit Worksheet

Respondent Brian K. Gay
Case ID No. 46283
Reg. Ent. Reference No. RN103636262
Media On-Site Sewage Disposal
Violation No. 5

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	\$25	18-Oct-2012	17-Nov-2013	1.08	\$1	n/a	\$1
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 implement procedures to ensure that the permitting authority is notified at least five working days before the date the OSSF will be ready for inspection. Date required is the initial investigation date, final date is the anticipated 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
 (Empty box for notes)

Approx. Cost of Compliance	\$25	TOTAL	\$1
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Screening Date 5-Feb-2013

Docket No. 2013-0391-OSI-E

PCW

Respondent Brian K. Gay

Policy Revision 3 (September 2011)

Case ID No. 46283

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103636262

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Jacquelyn Green

Violation Number 6

Rule Cite(s) 30 Tex. Admin. Code § 285.64(a)(3)

Violation Description

Failed to satisfy the requirements of the maintenance contract between the homeowner of the OSSF system and the maintenance provider. Specifically, subsequent to the OSSF installation, the Respondent has not returned to the Site to perform the required routine maintenance on the OSSF system.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential		x	

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

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 \$4,750

\$250

Violation Events

Number of Violation Events 1 Number of violation days 28

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$250

One quarterly event is recommended from the investigation date (January 8, 2013) to the screening date (February 5, 2013).

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Reduction	
	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 \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$32

Violation Final Penalty Total \$318

This violation Final Assessed Penalty (adjusted for limits) \$318

Economic Benefit Worksheet

Respondent Brian K. Gay
Case ID No. 46283
Reg. Ent. Reference No. RN103636262
Media On-Site Sewage Disposal
Violation No. 6

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)	\$600	18-Oct-2012	17-Nov-2013	1.08	\$32	n/a	\$32

Notes for DELAYED costs
 Estimated cost to perform the required routine maintenance on the OSSF system. Date required is the initial investigation date, final date is the anticipated 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	\$600	TOTAL	\$32
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Screening Date 5-Feb-2013

Docket No. 2013-0391-OSI-E

PCW

Respondent Brian K. Gay

Policy Revision 3 (September 2011)

Case ID No. 46283

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103636262

Media [Statute] On-Site Sewage Disposal

Enf. Coordinator Jacquelyn Green

Violation Number 7

Rule Cite(s) 30 Tex. Admin. Code § 285.32(a)(2)

Violation Description Failed to ensure that the OSSF piping is watertight. Specifically, the sanitary cleanout pipe was not properly sealed.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR	Harm			Percent	
	Release	Major	Moderate		Minor
	Actual				
	Potential		x		5.0%

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0.0%

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 \$4,750

\$250

Violation Events

Number of Violation Events 1 28 Number of violation days

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

Violation Base Penalty \$250

One quarterly event is recommended from the investigation date (January 8, 2013) to the screening date (February 5, 2013).

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 \$250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$12

Violation Final Penalty Total \$318

This violation Final Assessed Penalty (adjusted for limits) \$318

Economic Benefit Worksheet

Respondent Brian K. Gay
Case ID No. 46283
Reg. Ent. Reference No. RN103636262
Media On-Site Sewage Disposal
Violation No. 7

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)	\$225	18-Oct-2012	17-Nov-2013	1.08	\$12	n/a	\$12

Notes for DELAYED costs
 Estimated cost to ensure that OSSF piping is watertight. Date required is the initial investigation date, final date is the anticipated 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	\$225	TOTAL	\$12
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The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PUBLISHED Compliance History Report for CN602155236, RN103636262, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN602155236, Brian K Gay

Classification: NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN103636262, GAY, BRIAN K

Classification: NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A

Repeat Violator: N/A

CH Group: 14 - Other

Location: 3930 Live Oak Street in Damon, Brazoria County, Texas

TCEQ Region: REGION 12 - HOUSTON

ID Number(s):

ON SITE SEWAGE FACILITY LICENSING LICENSE MP0000815 (MAINTENANCE PROVIDER)

ON SITE SEWAGE FACILITY LICENSING LICENSE OS0027817 (INSTALLER II)

ON SITE SEWAGE FACILITY LICENSING LICENSE OS0029577 (SITE EVALUATOR)

Compliance History Period: September 01, 2007 to August 31, 2012 **Rating Year:** 2012 **Rating Date:** 09/01/2012

Date Compliance History Report Prepared: March 22, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: March 22, 2008 to March 22, 2013

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Jacquelyn Green

Phone: (512) 239-2587

Site and Owner/Operator History:

- 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 for #2, who is the current owner/operator? N/A
- 4) If YES for #2, 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

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

- 1 **Effective Date:** 08/21/2010 **ADMINORDER 2010-0203-OSI-E (1660 Order-Agreed Order With Denial)**

Classification: Major

Citation: 30 TAC Chapter 285, SubChapter F 285.61(4)

Description: Failure by Brian Gay, On-Site Sewage Facility (OSSF) installer, to ensure that an Authorization to Construct has been issued prior to beginning construction on an OSSF at the property owned by Mr. Billy Martin located at 11839 FM 252, Kirbyville, Mrs. Pearl Woods located at 293 CR 520, Magnolia Springs, Mrs. Lucy Limbrick located at 3110 West Lake Rd., Jasper, and Mr. Jerry Southwell located at 308 CR 306 S., Jasper, Jasper County, Texas.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

- 1 **Date:** 08/08/2012 (1023116)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 285, SubChapter D 285.31(d)

30 TAC Chapter 285, SubChapter I 285.91(10)

Description: Failed to meet the minimum required separation distance of 100 feet for OSSFs.

- 2 **Date:** 10/29/2012 (1041395)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 285, SubChapter D 285.32(a)(3)

Description: Failure by Brian Gay to meet the minimum slope requirements on sewer pipe from the building to the tank of 1/8" of fall per foot of pipe.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 285, SubChapter A 285.7
 Description: Failure by Brian Gay to install a weather resistant maintenance tag on the system.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 285, SubChapter D 285.33(d)(2)(E)
 Description: Failure by Brian Gay to install the minimum required spray field application area.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 285, SubChapter A 285.3(d)(2)
 Description: Failure by Brian Gay to notify the Region 10 Office at least 5 working days before the date that the OSSF will be ready for inspection.

Self Report? NO Classification: Moderate
 Citation: 5B THSC Chapter 366, SubChapter A 366.051(a)
 Description: Failure by Brian Gay to hold a permit and an approved plan to construct, alter, repair, or extend an on-site sewage disposal system from the commission.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 285, SubChapter F 285.64(a)(3)
 30 TAC Chapter 285, SubChapter I 285.91(4)
 Description: Failure by Brian Gay to perform routine maintenance as specified in the maintenance contract.

Self Report? NO Classification: Moderate
 Citation: 30 TAC Chapter 285, SubChapter D 285.32(a)(2)
 Description: Failure by Brian Gay to make all PVC connections and joints water tight.

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
BRIAN K. GAY;
RN103636262**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2013-0391-OSI-E

At its _____ agenda meeting, the Texas Commission on Environmental HSC Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition, filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 366, 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 Brian K. Gay ("Respondent").

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

FINDINGS OF FACT

1. Respondent, whose business office is located at 3930 Live Oak Street in Damon, Brazoria County, Texas (the "Business"), provides maintenance, constructs, installs, alters, and/or repairs, for compensation, On-Site Sewage Facilities ("OSSFs") as defined in 30 TEX. ADMIN. CODE § 285.2(45). Respondent holds and maintains OSSF Maintenance Provider License No. MP0000815 and OSSF Installer II License No. OS0027817, which authorize Respondent to provide maintenance for, construct, install, alter, and/or repair OSSFs. Therefore, Respondent is subject to TCEQ jurisdiction pursuant to TEX. HEALTH & SAFETY CODE § 366.011.
2. During an investigation conducted on January 8, 2013, a TCEQ Beaumont Regional Office investigator documented that Respondent:
 - a. Failed to construct the OSSF that was authorized by the permitting authority (TCEQ Beaumont Regional Office) at 3686 Haynes Loop in Kountze, Hardin County, Texas (the "Site"). Specifically, Respondent installed a surface spray application area at the Site instead of a drip irrigation application area. The original permit and design was approved for the installation of a drip irrigation application area;
 - b. Failed to provide a slope for the sanitary cleanout pipe at the Site of no less than 1/8 inch of fall per foot of pipe. Specifically, there was a total of 4/8 inch of fall from the six foot two-way sanitary clean-out pipe to the septic tank, rather than the required minimum fall of 6/8 inches;
 - c. Failed to install a weather resistant maintenance tag on the OSSF system at the Site;
 - d. Failed to install the minimum required spray field application area at the Site. Specifically, the two spray heads that were installed at the Site had a total of 2,180 square feet of application area rather than the required minimum of 6,857 square feet;

- e. Failed to notify the permitting authority (TCEQ Beaumont Regional Office) at least five working days before the date the OSSF at the Site was ready for inspection and operation;
 - f. Failed to satisfy the requirements of the maintenance contract with the homeowner of the Site. Specifically, Respondent failed to perform required routine maintenance on the OSSF system at the Site; and
 - g. Failed to ensure that the OSSF piping at the Site is watertight. Specifically, the sanitary cleanout pipe at the Site was not properly sealed.
3. Respondent received notice of the violations on or about January 19, 2013.
 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 Brian K. Gay" (the "EDPRP") in the TCEQ Chief Clerk's office on June 19, 2013.
 5. By letter dated June 19, 2013, sent to Respondent's last known address via certified mail, return receipt requested, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the return receipt "green card," Respondent received notice of the EDPRP on July 10, 2013, as evidenced by the signature on the card.
 6. 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. HEALTH & SAFETY CODE ch. 366 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to construct the OSSF that was authorized by the permitting authority, in violation of TEX. HEALTH & SAFETY CODE § 366.051(a), and 30 TEX. ADMIN. CODE §§ 285.3(a) and 285.61(7).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to provide a slope for the sanitary cleanout pipe at the Site of no less than 1/8 inch of fall per foot of pipe, in violation of 30 TEX. ADMIN. CODE § 285.32(a)(3).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to install a weather resistant maintenance tag on the OSSF system at the Site, in violation of 30 TEX. ADMIN. CODE § 285.7(e)(2).
5. As evidenced by Finding of Fact No. 2.d., Respondent failed to install the minimum required spray field application area at the Site, in violation of 30 TEX. ADMIN. CODE § 285.33.
6. As evidenced by Finding of Fact No. 2.e., Respondent failed to notify the permitting authority at least five working days before the date the OSSF at the Site was ready for inspection and operation, in violation of 30 TEX. ADMIN. CODE § 285.3(d)(2).
7. As evidenced by Finding of Fact No. 2.f., Respondent failed to satisfy the requirements of the maintenance contract with the homeowner of the Site, in violation of 30 TEX. ADMIN. CODE § 285.64(a)(3).

8. As evidenced by Finding of Fact No. 2.g., Respondent failed to ensure that the OSSF piping at the Site is watertight, in violation of 30 TEX. ADMIN. CODE § 285.32(a)(2).
9. As evidenced by Findings of Fact Nos. 4 and 5, 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(b)(1).
10. As evidenced by Finding of Fact No. 6, 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.
11. 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.
12. An administrative penalty in the amount of two thousand two hundred twenty-two dollars (\$2,222.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
13. 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 two thousand two hundred twenty-two dollars (\$2,222.00) 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: Brian K. Gay; Docket No. 2013-0391-OSI-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. Within 30 days after the effective date of this Order, Respondent shall:
 - i. Update operational procedures to ensure that all future OSSFs will be constructed properly and in accordance with the approved authorization to construct, in accordance with 30 TEX. ADMIN. CODE §§ 285.3(a) and 285.61(7);

- ii. Develop and implement measures and procedures to ensure that the appropriate permitting authority will be notified at least five working days before the date the OSSF will be ready for inspection, in accordance with 30 TEX. ADMIN. CODE § 285.3(d)(2); and
 - iii. Develop and implement measures and procedures to ensure that all routine maintenance is performed on OSSFs as specified in the maintenance contract, in accordance with 30 TEX. ADMIN. CODE § 285.64(a)(3).
- b. Within 45 days after the effective date of this Order, Respondent shall submit written certification to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and 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:

Ronald Hebert, Water Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

- 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 Business 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

For the Commission

AFFIDAVIT OF KARI L. GILBRETH

STATE OF TEXAS

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COUNTY OF TRAVIS

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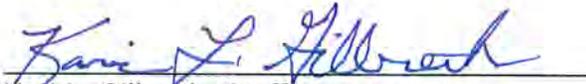
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"My name is Kari L. Gilbreth. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

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 Brian K. Gay" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on June 19, 2013.

The EDPRP was mailed to Respondent's last known address on June 19, 2013, via certified mail, return receipt requested, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on July 10, 2013, as evidenced by the signature on the card.

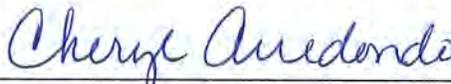
More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing."



Kari L. Gilbreth, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Kari L. Gilbreth, 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 20th day of November, A.D. 2013.



Notary Signature



Notary without Bond