

Executive Summary – Enforcement Matter – Case No. 46989
Ernest Pickens dba Pickens Auto Parts
RN103206975
Docket No. 2013-1075-MLM-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

MLM – WQ, IHW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Pickens Auto Parts, 2509 Bellmead Drive, Waco, McLennan County

Type of Operation:

Salvage yard

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: December 27, 2013

Comments Received: No

Penalty Information

Total Penalty Assessed: \$19,274

Amount Deferred for Expedited Settlement: \$3,854

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$1,285

Total Due to General Revenue: \$14,135

Payment Plan: 11 payments of \$1,285 each

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Unclassified

Site/RN - Unclassified

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

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RN103206975
Docket No. 2013-1075-MLM-E**

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: April 15, 2013

Date(s) of NOE(s): May 28, 2013

Violation Information

1. Failed to prevent the discharge of industrial waste into or adjacent to water in the state. Specifically, industrial waste and automotive fluid spills were noted at numerous locations throughout the Facility [TEX. WATER CODE § 26.121(a) and 30 TEX. ADMIN. CODE § 335.4].
2. Failed to conduct quarterly periodic routine Facility inspections to determine the effectiveness of the pollution prevention measures and controls. Specifically, the Respondent failed to conduct the quarterly inspections for the second, third, and fourth quarters of calendar year ("CY") 2012 and for the first quarter of CY 2013 [Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR05L381, Part III, Section B.2., Routine Facility Inspections, and 30 TEX. ADMIN. CODE § 305.125(1)].
3. Failed to conduct quarterly visual monitoring of storm water discharges from each outfall. Specifically, the Respondent failed to conduct the quarterly inspections for the second, third, and fourth quarters of CY 2012 and for the first quarter of CY 2013 [TPDES General Permit No. TXR05L381, Part III, Section B.3., Quarterly Visual Monitoring, and 30 TEX. ADMIN. CODE § 305.125(1)].
4. Failed to conduct the annual comprehensive site evaluations and overall assessments of the effectiveness of the current storm water pollution prevention plan ("SWP3") for CY 2012 [TPDES General Permit No. TXR05L381, Part III, Section B.5., Annual Comprehensive Site Compliance Inspection, and 30 TEX. ADMIN. CODE § 305.125(1)].
5. Failed to collect grab samples for hazardous metals at a minimum frequency of once per year at the final outfall for CY 2012 [TPDES General Permit No. TXR05L381, Part III, Section C.1.(b), Discharges of Storm Water Runoff, and 30 TEX. ADMIN. CODE § 305.125(1)].
6. Failed to maintain a rain gauge monitoring log available for review [TPDES General Permit No. TXR05L381, Part III, Section D.1.(c), General Monitoring and Records Requirements, and 30 TEX. ADMIN. CODE § 305.125(1)].
7. Failed to conduct semiannual benchmark monitoring for CY 2012 [TPDES General Permit No. TXR05L381, Part IV, Section A.1., Monitoring for Benchmark Parameters in Discharges, and 30 TEX. ADMIN. CODE § 305.125(1)].

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8. Failed to maintain an adequate and up-to-date SWP3. Specifically, the requirements of TPDES General Permit No. TXR05L381, Part III, Section A, were not addressed and documented in the Facility's SWP3 [TPDES General Permit No. TXR05L381, Part III, Section A.6., SWP3 Review, and 30 TEX. ADMIN. CODE § 305.125(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Within 15 days:
 - i. Begin maintaining an adequate and up-to-date SWP3, to include the establishment of a storm water pollution prevention team; records documenting spill and leaks along with its associated corrective actions, and sampling data; and reference to education/training of employees; and
 - ii. Begin maintaining a rain gauge monitoring log.
- b. Within 30 days, properly remove and dispose of contaminated soil from all the affected areas;
- c. Within 45 days, submit written certification of compliance with Ordering Provisions a. and b.;
- d. Within 60 days:
 - i. Update operational procedures to ensure the requirements of the SWP3 are fulfilled;
 - ii. Begin conducting periodic routine Facility inspections to determine the effectiveness of the pollution prevention measures and controls on a quarterly basis;
 - iii. Begin conducting quarterly visual monitoring of storm water discharges from each outfall; and
 - iv. Begin conducting annual comprehensive site evaluations and overall assessments of the effectiveness of the current SWP3.
- e. Within 90 days:
 - i. Begin conducting semiannual benchmark monitoring at the Facility; and
 - ii. Begin collecting grab samples for hazardous metals at a minimum frequency of once per year at the final outfall.
- f. Within 105 days, submit written certification of compliance with Ordering Provisions d. and e.

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RN103206975
Docket No. 2013-1075-MLM-E

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Jorge Ibarra, P.E., Enforcement Division,
Enforcement Team 3, MC R-04, (817) 588-5890; Candy Garrett, Enforcement Division,
MC 219, (512) 239-1456
TCEQ SEP Coordinator: N/A
Respondent: Ernest Pickens, Owner, Pickens Auto Parts, 2509 Bellmead Drive,
Waco, Texas 76705
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	3-Jun-2013	Screening	3-Jun-2013	EPA Due	
	PCW	5-Jun-2013				

RESPONDENT/FACILITY INFORMATION	
Respondent	Ernest Pickens dba Pickens Auto Parts
Reg. Ent. Ref. No.	RN103206975
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION		No. of Violations	7
Enf./Case ID No.	46989	Order Type	1660
Docket No.	2013-1075-MLM-E	Government/Non-Profit	No
Media Program(s)	Water Quality	Enf. Coordinator	Jorge Ibarra, P.E.
Multi-Media	Industrial and Hazardous Waste	EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** **\$17,750**

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** **\$887**

Notes: Enhancement for one NOV with same/similar violations.

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 \$860
Approx. Cost of Compliance \$3,700
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** **\$18,637**

OTHER FACTORS AS JUSTICE MAY REQUIRE **3.4%** **Adjustment** **\$637**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended enhancement to capture the avoided cost associated with Violation Nos. 2, 3, 4, and 6.

Final Penalty Amount **\$19,274**

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** **\$19,274**

DEFERRAL **20.0%** Reduction **Adjustment** **-\$3,854**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY **\$15,420**

Screening Date 3-Jun-2013

Docket No. 2013-1075-MLM-E

PCW

Respondent Ernest Pickens dba Pickens Auto Parts

Policy Revision 3 (September 2011)

Case ID No. 46989

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103206975

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

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%

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) 5%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with same/similar violations.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 5%

Screening Date 3-Jun-2013

Docket No. 2013-1075-MLM-E

PCW

Respondent Ernest Pickens dba Pickens Auto Parts

Policy Revision 3 (September 2011)

Case ID No. 46989

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103206975

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 1

Rule Cite(s)

Tex. Water Code § 26.121(a) and 30 Tex. Admin. Code § 335.4

Violation Description

Failed to prevent the discharge of industrial waste into or adjacent to water in the state. Specifically, industrial waste and automotive fluid spills were noted at numerous locations throughout the Facility.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 5.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

49 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$1,250

One quarterly event is recommended from the record review date of April 15, 2013 to the screening date of June 3, 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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$161

Violation Final Penalty Total \$1,357

This violation Final Assessed Penalty (adjusted for limits) \$1,357

Economic Benefit Worksheet

Respondent Ernest Pickens dba Pickens Auto Parts
Case ID No. 46989
Reg. Ent. Reference No. RN103206975
Media Water Quality
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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$2,000	8-May-2012	15-Dec-2013	1.61	\$161	n/a	\$161
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly remove and dispose of contaminated soil. Date required is the date the violation was first documented and the final date is the expected compliance date.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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

\$2,000

TOTAL

\$161

Screening Date 3-Jun-2013

Docket No. 2013-1075-MLM-E

PCW

Respondent Ernest Pickens dba Pickens Auto Parts

Policy Revision 3 (September 2011)

Case ID No. 46989

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103206975

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 2

Rule Cite(s)

Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR05L381, Part III, Section B.2. and B.3., Routine Facility Inspections and Quarterly Visual Monitoring, and 30 Tex. Admin. Code § 305.125(1)

Violation Description

Failed to conduct quarterly periodic routine Facility Inspections to determine the effectiveness of the pollution prevention measures and controls and to conduct quarterly visual monitoring of storm water discharges from each outfall. Specifically, the Respondent failed to conduct the quarterly inspections for the second, third, and fourth quarters of calendar year ("CY") 2012 and for the first quarter of CY 2013.

Base Penalty \$25,000

>> 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 \$23,750

\$1,250

Violation Events

Number of Violation Events 4

364 Number of violation days

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

Violation Base Penalty \$5,000

Four quarterly events are 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 \$5,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$237

Violation Final Penalty Total \$5,429

This violation Final Assessed Penalty (adjusted for limits) \$5,429

Economic Benefit Worksheet

Respondent Ernest Pickens dba Pickens Auto Parts
Case ID No. 46989
Req. Ent. Reference No. RN103206975
Media Water Quality
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime 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	15-Apr-2013	1-Feb-2014	0.80	\$20	n/a	\$20

Notes for DELAYED costs

Estimated cost to update operational procedures to ensure the requirements of the storm water pollution prevention plan ("SWP3") are fulfilled. Date required is the record review date and the 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]	\$200	30-Jun-2012	31-Mar-2013	1.67	\$17	\$200	\$217
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost (\$25 per inspection, 8 inspections) to conduct the quarterly inspections at the Facility. Date required is the last day of the first quarter in which the inspection was not conducted and final date is the last date of the quarter in which the inspection was not conducted.

Approx. Cost of Compliance

\$700

TOTAL

\$237

Screening Date 3-Jun-2013

Docket No. 2013-1075-MLM-E

PCW

Respondent Ernest Pickens dba Pickens Auto Parts

Policy Revision 3 (September 2011)

Case ID No. 46989

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103206975

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 3

Rule Cite(s)

TPDES General Permit No. TXR05L381, Part III, Section B.5., Annual Comprehensive Site Compliance Inspection, and 30 Tex. Admin. Code § 305.125(1)

Violation Description

Failed to conduct the annual comprehensive site evaluations and overall assessments of the effectiveness of the current storm water pollution prevention plan ("SWP3") for CY 2012.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

>> 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 exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

365 Number of violation days

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

Violation Base Penalty \$3,750

One annual 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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$106

Violation Final Penalty Total \$4,072

This violation Final Assessed Penalty (adjusted for limits) \$4,072

Economic Benefit Worksheet

Respondent Ernest Pickens dba Pickens Auto Parts
Case ID No. 46989
Reg. Ent. Reference No. RN103206975
Media Water Quality
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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See economic benefit for Violation No 2.

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-Dec-2012	15-Apr-2013	1.21	\$6	\$100	\$106
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost to conduct the annual inspection at the Facility. Date required is the date the evaluation was due and the final date is the record review date.

Approx. Cost of Compliance

\$100

TOTAL

\$106

Screening Date 3-Jun-2013

Docket No. 2013-1075-MLM-E

PCW

Respondent Ernest Pickens dba Pickens Auto Parts

Policy Revision 3 (September 2011)

Case ID No. 46989

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103206975

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 4

Rule Cite(s)

TPDES General Permit No. TXR05L381, Part III, Section C.1.(b), Discharges of Storm Water Runoff, and 30 Tex. Admin. Code § 305.125(1)

Violation Description

Failed to collect grab samples for hazardous metals at a minimum frequency of once per year at the final outfall for CY 2012.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent 15.0%

>> 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 exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 1

49 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	X
single event	

mark only one with an x

Violation Base Penalty \$3,750

One annual event is recommended for calendar year 2012.

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 \$3,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$104

Violation Final Penalty Total \$4,072

This violation Final Assessed Penalty (adjusted for limits) \$4,072

Economic Benefit Worksheet

Respondent Ernest Pickens dba Pickens Auto Parts
Case ID No. 46989
Reg. Ent. Reference No. RN103206975
Media Water Quality
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
No commas or \$							

Delayed Costs

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$100	15-Apr-2013	15-Jan-2014	0.75	\$4	n/a	\$4
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 begin collecting grab samples for hazardous metals on an annual basis at the Facility. Date required is the record review date and the final date is the anticipated compliance date.

Avoided Costs

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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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-Dec-2012	1-Jan-2013	0.00	\$0	\$100	\$100
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated avoided cost (\$100 per sample) to collect the yearly grab sample for hazardous metals at the Facility calculated for the date the effluent discharge monitoring data was due.

Approx. Cost of Compliance

\$200

TOTAL

\$104

Screening Date 3-Jun-2013

Docket No. 2013-1075-MLM-E

PCW

Respondent Ernest Pickens dba Pickens Auto Parts

Policy Revision 3 (September 2011)

Case ID No. 46989

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103206975

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 5

Rule Cite(s)

TPDES General Permit No. TXR05L381, Part III, Section D.1.(c), General Monitoring and Records Requirements, and 30 Tex. Admin. Code § 305.125(1)

Violation Description

Failed to maintain a rain gauge monitoring log available for review.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

Violation Events

Number of Violation Events 1

391 Number of violation days

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

Violation Base Penalty \$1,250

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 \$1,250

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$16

Violation Final Penalty Total \$1,357

This violation Final Assessed Penalty (adjusted for limits) \$1,357

Economic Benefit Worksheet

Respondent Ernest Pickens dba Pickens Auto Parts
Case ID No. 46989
Req. Ent. Reference No. RN103206975
Media Water Quality
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	\$200	8-May-2012	1-Dec-2013	1.57	\$16	n/a	\$16
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

Estimated cost to begin maintaining a rain gauge monitoring log. Date required is the date the violation was first documented and the 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

\$200

TOTAL

\$16

Screening Date 3-Jun-2013

Docket No. 2013-1075-MLM-E

PCW

Respondent Ernest Pickens dba Pickens Auto Parts

Policy Revision 3 (September 2011)

Case ID No. 46989

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103206975

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 6

Rule Cite(s)

TPDES General Permit No. TXR05L381, Part IV, Section A.1., Monitoring for Benchmark Parameters in Discharges, and 30 Tex. Admin. Code § 305.125(1)

Violation Description

Failed to conduct semiannual benchmark monitoring for CY 2012.

Base Penalty \$25,000

>> 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 \$23,750

\$1,250

Violation Events

2

365 Number of violation days

mark only one with an x

daily	
weekly	
monthly	
quarterly	
semiannual	x
annual	
single event	

Violation Base Penalty \$2,500

Two semiannual events are 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 \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$214

Violation Final Penalty Total \$2,715

This violation Final Assessed Penalty (adjusted for limits) \$2,715

Economic Benefit Worksheet

Respondent Ernest Pickens dba Pickens Auto Parts
Case ID No. 46989
Reg. Ent. Reference No. RN103206975
Media Violation No. Water Quality
 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)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

See economic benefit for Violation No. 2.

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)	\$200	30-Jun-2012	31-Dec-2012	1.42	\$14	\$200	\$214

Notes for AVOIDED costs

Estimated avoided cost for the samples not collected. Date required is the end of the first monitoring period and the final date is the end of the second monitoring period.

Approx. Cost of Compliance

\$200

TOTAL

\$214

Screening Date 3-Jun-2013

Docket No. 2013-1075-MLM-E

PCW

Respondent Ernest Pickens dba Pickens Auto Parts

Policy Revision 3 (September 2011)

Case ID No. 46989

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103206975

Media [Statute] Water Quality

Enf. Coordinator Jorge Ibarra, P.E.

Violation Number 7

Rule Cite(s)

TPDES General Permit No. TXR05L381, Part III, Section A.6., SWP3 Review, and 30 Tex. Admin. Code § 305.125(1)

Violation Description

Failed to maintain an adequate and up-to-date SWP3. Specifically, the requirements of TPDES General Permit No. TXR05L381, Part III, Section A, were not addressed and documented in the Facility's SWP3.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Harm		
	Major	Moderate	Minor
			x

Percent 1.0%

Matrix Notes

Less than 30% of the rule requirement was not met.

Adjustment \$24,750

\$250

Violation Events

1

391 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 \$24

Violation Final Penalty Total \$271

This violation Final Assessed Penalty (adjusted for limits) \$271

Economic Benefit Worksheet

Respondent Ernest Pickens dba Pickens Auto Parts
Case ID No. 46989
Reg. Ent. Reference No. RN103206975
Media Water Quality
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	\$300	8-May-2012	1-Dec-2013	1.57	\$24	n/a	\$24
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

Estimated cost to address the requirements of Section A of the current SWP3 and to begin maintaining an up-to-date SWP3. Date required is the date the violation was first documented and the 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

\$300

TOTAL

\$24



Compliance History Report

PUBLISHED Compliance History Report for CN603326364, RN103206975, Rating Year 2012 which includes Compliance History (CH) components from September 1, 2007, through August 31, 2012.

Customer, Respondent, or Owner/Operator: CN603326364, PICKENS, ERNEST **Classification:** UNCLASSIFIED **Rating:** -----
Regulated Entity: RN103206975, PICKENS AUTO PARTS **Classification:** UNCLASSIFIED **Rating:** -----
Complexity Points: 0 **Repeat Violator:** NO
CH Group: 14 - Other
Location: 2509 BELLMEAD DR WACO, TX 76705-3214, MCLENNAN COUNTY
TCEQ Region: REGION 09 - WACO

ID Number(s):
WATER QUALITY NON PERMITTED ID NUMBER
R09103206975

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

Date Compliance History Report Prepared: July 15, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: June 03, 2008 to June 03, 2013

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

Name: Jorge Ibarra, P.E. **Phone** (817) 588-5890

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:

N/A

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:	06/29/2012 (1003158)	CN601728439
	Self Report?	NO	Classification: Moderate
	Citation:	30 TAC Chapter 335, SubChapter A 335.4	
	Description:	Failure to prevent the unauthorized disposal of industrial waste.	
	Self Report?	NO	Classification: Moderate
	Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4)	
		TXR05L381, MSGP Part III; Section B(2) PERMIT	

Description:	Failure to conduct Periodic Inspections.	Classification:	Moderate
Self Report?	NO		
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) Permit TXR05L381, MSGP Part III; Section PERMIT		
Description:	Failure to conduct Quarterly Visual Monitoring.	Classification:	Moderate
Self Report?	NO		
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) TXR05L381, Part III; Section B(5)(a)-(b) PERMIT		
Description:	Failure to conduct the annual comprehensive site evaluation.	Classification:	Moderate
Self Report?	NO		
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) TXR05L381, MSGP Part III; Section D(1)(b) PERMIT		
Description:	Failure to conduct hazardous metals effluent limitation sampling.	Classification:	Moderate
Self Report?	NO		
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) TXR05L381 MSGP Part III Section D(1)(c) PERMIT		
Description:	Failure to maintain a rain log.	Classification:	Moderate
Self Report?	NO		
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) TXR05L381, MSGP Part IV PERMIT		
Description:	Failure to conduct benchmark monitoring.	Classification:	Moderate
Self Report?	NO		
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) TXR05L381, MSGP Part III; Section A(6) PERMIT		
Description:	Failure to maintain an adequate and up to date SWP3.		

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	§	BEFORE THE
ENFORCEMENT ACTION	§	
CONCERNING	§	
ERNEST PICKENS DBA PICKENS	§	TEXAS COMMISSION ON
AUTO PARTS	§	
RN103206975	§	ENVIRONMENTAL QUALITY

AGREED ORDER DOCKET NO. 2013-1075-MLM-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Ernest Pickens dba Pickens Auto Parts ("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, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a salvage yard at 2509 Bellmead Drive in Waco, McLennan County, Texas (the "Facility").
2. The Respondent has committed any other act or engaged in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water in the state under TEX. WATER CODE ch. 26.
3. The Facility involves or involved the management of industrial waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
4. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
5. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about June 2, 2013.
6. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
7. An administrative penalty in the amount of Nineteen Thousand Two Hundred Seventy-Four Dollars (\$19,274) is assessed by the Commission in settlement of the violations

alleged in Section II ("Allegations"). The Respondent has paid One Thousand Two Hundred Eighty-Five Dollars (\$1,285) of the administrative penalty and Three Thousand Eight Hundred Fifty-Four Dollars (\$3,854) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, including the payment schedule, the Executive Director may require the Respondent to pay all or part of the deferred penalty.

The remaining amount of Fourteen Thousand One Hundred Thirty-Five Dollars (\$14,135) of the administrative penalty shall be payable in eleven monthly payments of One Thousand Two Hundred Eighty-Five Dollars (\$1,285) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If the Respondent fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, the Executive Director may, at the Executive Director's 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, the failure of the Respondent to meet the payment schedule of this Agreed Order constitutes the failure by the Respondent to timely and satisfactorily comply with all the terms of this Agreed Order.

8. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
9. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
10. 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 the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. 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.
12. 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.

II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to prevent the discharge of industrial waste into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a) and 30 TEX. ADMIN. CODE § 335.4, as documented during a record review conducted on April 15, 2013. Specifically, industrial

- waste and automotive fluid spills were noted at numerous locations throughout the Facility.
2. Failed to conduct quarterly periodic routine Facility inspections to determine the effectiveness of the pollution prevention measures and controls, in violation of Texas Pollutant Discharge Elimination System ("TPDES") General Permit No. TXR05L381, Part III, Section B.2., Routine Facility Inspections, and 30 TEX. ADMIN. CODE § 305.125(1), as documented during a record review conducted on April 15, 2013. Specifically, the Respondent failed to conduct the quarterly inspections for the second, third, and fourth quarters of calendar year ("CY") 2012 and for the first quarter of CY 2013.
 3. Failed to conduct quarterly visual monitoring of storm water discharges from each outfall, in violation of TPDES General Permit No. TXR05L381, Part III, Section B.3., Quarterly Visual Monitoring, and 30 TEX. ADMIN. CODE § 305.125(1), as documented during a record review conducted on April 15, 2013. Specifically, the Respondent failed to conduct the quarterly inspections for the second, third, and fourth quarters of CY 2012 and for the first quarter of CY 2013.
 4. Failed to conduct the annual comprehensive site evaluations and overall assessments of the effectiveness of the current storm water pollution prevention plan ("SWP3") for CY 2012, in violation of TPDES General Permit No. TXR05L381, Part III, Section B.5., Annual Comprehensive Site Compliance Inspection, and 30 TEX. ADMIN. CODE § 305.125(1), as documented during a record review conducted on April 15, 2013.
 5. Failed to collect grab samples for hazardous metals at a minimum frequency of once per year at the final outfall for CY 2012, in violation of TPDES General Permit No. TXR05L381, Part III, Section C.1.(b), Discharges of Storm Water Runoff, and 30 TEX. ADMIN. CODE § 305.125(1), as documented during a record review conducted on April 15, 2013.
 6. Failed to maintain a rain gauge monitoring log available for review, in violation of TPDES General Permit No. TXR05L381, Part III, Section D.1.(c), General Monitoring and Records Requirements, and 30 TEX. ADMIN. CODE § 305.125(1), as documented during a record review conducted on April 15, 2013.
 7. Failed to conduct semiannual benchmark monitoring for CY 2012, in violation of TPDES General Permit No. TXR05L381, Part IV, Section A.1., Monitoring for Benchmark Parameters in Discharges, and 30 TEX. ADMIN. CODE § 305.125(1), as documented during a record review conducted on April 15, 2013.
 8. Failed to maintain an adequate and up-to-date SWP3, in violation of TPDES General Permit No. TXR05L381, Part III, Section A.6., SWP3 Review, and 30 TEX. ADMIN. CODE § 305.125(1), as documented during a record review conducted on April 15, 2013. Specifically, the requirements of TPDES General Permit No. TXR05L381, Part III, Section A, were not addressed and documented in the Facility's SWP3.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 7 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Ernest Pickens dba Pickens Auto Parts, Docket No. 2013-1075-MLM-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Within 15 days after the effective date of this Agreed Order:
 - i. Begin maintaining an adequate and up-to-date SWP3, to include the establishment of a storm water pollution prevention team; records documenting spill and leaks along with its associated corrective actions, and sampling data; and reference to education/training of employees to accordance with TPDES General Permit No. TXR05L381, Part III, Section A.6.; and
 - ii. Begin maintaining a rain gauge monitoring log, in accordance with TPDES General Permit No. TXR05L381, Part III, Section D.1.(c).
 - b. Within 30 days after the effective date of this Agreed Order, properly remove and dispose of contaminated soil from all the affected areas;
 - c. Within 45 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.a. and 2.b., in accordance with Order Provision No. 2.g. below;
 - d. Within 60 days after the effective date of this Agreed Order:
 - i. Update operational procedures to ensure the requirements of the SWP3 are fulfilled;

- ii. Begin conducting periodic routine Facility inspections to determine the effectiveness of the pollution prevention measures and controls on a quarterly basis, in accordance with TPDES General Permit No. TXR05L381, Part III, Section B.2.;
 - iii. Begin conducting quarterly visual monitoring of storm water discharges from each outfall, in accordance with TPDES General Permit No. TXR05L381, Part III, Section B.3.; and
 - iv. Begin conducting annual comprehensive site evaluations and overall assessments of the effectiveness of the current SWP3, in accordance with TPDES General Permit No. TXR05L381, Part III, Section B.5.
- e. Within 90 days after the effective date of this Agreed Order:
- i. Begin conducting semiannual benchmark monitoring at the Facility, in accordance with TPDES General Permit No. TXR05L381, Part IV, Section A.1.; and
 - ii. Begin collecting grab samples for hazardous metals at a minimum frequency of once per year at the final outfall, in accordance with TPDES General Permit No. TXR05L381, Part III, Section C.1.(b).
- f. Within 105 days after the effective date of this Agreed Order, submit written certification of compliance with Ordering Provision Nos. 2.d. and 2.e., in accordance with Order Provision No. 2.g. below; and
- g. All certifications shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. 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 this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

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

with a copy to:

Water Section Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the 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, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the 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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. 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.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

3/28/14
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, 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, if any, in this 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 submitted;
- 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, any falsification of any compliance documents may result in criminal prosecution.


Signature

11-19-13
Date

Ernest Pickens
Name (Printed or typed)
Authorized Representative of
Ernest Pickens dba Pickens Auto Parts

Owner
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.