

Executive Summary – Enforcement Matter – Case No. 47699
United States Army Corps of Engineers
RN102680725
Docket No. 2013-1806-PWS-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Three or more enforcement actions (NOVs, orders, etc.) over the prior five year period for the same violation(s).

Media:

PWS

Small Business:

No

Location(s) Where Violation(s) Occurred:

USCOE Holiday Park 3 Benbrook, 5000 Lakeview Drive, Benbrook, Tarrant County

Type of Operation:

Public water supply

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: February 28, 2014

Comments Received: No

Penalty Information

Total Penalty Assessed: \$517

Amount Deferred for Expedited Settlement: \$0

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$517

Total Due to General Revenue: \$0

Payment Plan: N/A

SEP Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - Satisfactory

Site/RN - N/A

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2011

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Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: August 19, 2013
Date(s) of NOE(s): September 4, 2013

Violation Information

Failed to comply with the maximum contaminant level for total coliform [30 TEX. ADMIN. CODE § 290.109(f)(3) and TEX. HEALTH & SAFETY CODE § 341.031(a)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days, begin complying with applicable coliform monitoring requirements by providing water that meets the provisions regarding microbial contaminants. This provision will be satisfied upon six consecutive months of compliant monitoring and reporting.
- b. Within 225 days, submit written certification demonstrating compliance with Ordering Provision a.

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: Lisa Westbrook, Enforcement Division, Enforcement Team 2, MC 169, (512) 239-1160; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456
TCEQ SEP Coordinator: N/A
Respondent: Jason W. Owen, Natural Resource Manager, Benbrook/Joe Pool Lakes, United States Army Corps of Engineers, P.O. Box 26619, Fort Worth, Texas 76126-0619
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	9-Sep-2013	Screening	16-Sep-2013	EPA Due	31-Dec-2013
	PCW	20-Sep-2013				

RESPONDENT/FACILITY INFORMATION

Respondent	United States Army Corps of Engineers				
Reg. Ent. Ref. No.	RN102680725				
Facility/Site Region	4- Dallas/Fort. Worth	Major/Minor Source	Minor		

CASE INFORMATION

Enf./Case ID No.	47699	No. of Violations	1
Docket No.	2013-1806-PWS-E	Order Type	Findings
Media Program(s)	Public Water Supply	Government/Non-Profit	Yes
Multi-Media		Enf. Coordinator	Lisa Westbrook
		EC's Team	Enforcement Team 2
Admin. Penalty \$ Limit Minimum	\$50	Maximum	\$1,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1** \$450

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History 15.0% Enhancement **Subtotals 2, 3, & 7** \$67

Notes: Enhancement for three NOVs 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 \$106
Approx. Cost of Compliance \$100
*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7 **Final Subtotal** \$517

OTHER FACTORS AS JUSTICE MAY REQUIRE 0.0% **Adjustment** \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount \$517

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty** \$517

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

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

Notes:

No deferral is recommended for Findings Orders.

PAYABLE PENALTY \$517

Screening Date 16-Sep-2013

Docket No. 2013-1806-PWS-E

PCW

Respondent United States Army Corps of Engineers

Policy Revision 3 (September 2011)

Case ID No. 47699

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102680725

Media [Statute] Public Water Supply

Enf. Coordinator Lisa Westbrook

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>)	3	15%
	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) 15%

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

N/A

Adjustment Percentage (Subtotal 3) 0%

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

Satisfactory Performer

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes

Enhancement for three NOVs with same/similar violations.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 15%

>> **Final Compliance History Adjustment**

Final Adjustment Percentage *capped at 100% 15%

Screening Date 16-Sep-2013

Docket No. 2013-1806-PWS-E

PCW

Respondent United States Army Corps of Engineers

Policy Revision 3 (September 2011)

Case ID No. 47699

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN102680725

Media [Statute] Public Water Supply

Enf. Coordinator Lisa Westbrook

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 290.109(f)(3) and Tex. Health & Safety Code § 341.031(a)

Violation Description Failed to comply with the maximum contaminant level for total coliform during the months of June, July and August 2013.

Base Penalty \$1,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual		X		15.0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0.0%

Matrix Notes As a result of the exceedance, persons served by the Facility have been exposed to significant amounts of contaminants which do not exceed levels protective of human health.

Adjustment \$850

\$150

Violation Events

Number of Violation Events 3 Number of violation days 92

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

Violation Base Penalty \$450

Three monthly events are recommended.

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 \$450

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$106

Violation Final Penalty Total \$518

This violation Final Assessed Penalty (adjusted for limits) \$518

Economic Benefit Worksheet

Respondent United States Army Corps of Engineers
Case ID No. 47699
Reg. Ent. Reference No. RN102680725
Media Public Water Supply
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

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

Delayed Costs

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

Notes for DELAYED costs

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	1-Jun-2013	31-Aug-2013	1.17	\$6	\$100	\$106
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

The avoided cost includes the estimated amount necessary for additional sampling and oversight that could have prevented these exceedances, calculated for the months in which the exceedances occurred.

Approx. Cost of Compliance \$100

TOTAL \$106



TCEQ Compliance History Report

PENDING Compliance History Report for CN600918916, RN102680725, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN600918916, United States Army Corps of Engineers **Classification:** SATISFACTORY **Rating:** 10.38
Regulated Entity: RN102680725, USCOE HOLIDAY PARK 3 BENBROOK **Classification:** NOT APPLICABLE **Rating:** N/A
Complexity Points: N/A **Repeat Violator:** N/A
CH Group: 14 - Other
Location: 5000 LAKEVIEW DRIVE, BENBROOK, TARRANT COUNTY, TEXAS
TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s): PUBLIC WATER SYSTEM/SUPPLY REGISTRATION 2200216
Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 09/01/2013

Date Compliance History Report Prepared: September 13, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: September 13, 2008 to September 13, 2013

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

Name: Lisa Westbrook **Phone:** (512) 239-1160

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: 06/25/2013 (1114957) CN600918916
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)

Description: TCR MCL Violation 06/2013 - System exceeded a maximum contaminant level.

2 Date: 07/15/2013 (1114957) CN600918916
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)
Description: TCR MCL Violation 07/2013 - System exceeded a maximum contaminant level.

3 Date: 08/12/2013 (1114957) CN600918916
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 290, SubChapter F 290.109(f)(3)
Description: TCR MCL Violation 08/2013 - System exceeded a maximum contaminant level.

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

Item 2 August 22, 2013** For Informational Purposes Only

(1115219)

Item 3 September 06, 2013 For Informational Purposes Only

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2008 and 08/31/2013.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
UNITED STATES ARMY CORPS OF
ENGINEERS
RN102680725**

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§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**AGREED ORDER
DOCKET NO. 2013-1806-PWS-E**

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding United States Army Corps of Engineers (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 341. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this agreement to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including, but not limited to, the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Agreed Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated settlement of the parties. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Agreed Order are binding upon the Respondent.

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

I. FINDINGS OF FACT

1. The Respondent owns and operates a public water supply at 5000 Lakeview Drive in Benbrook, Tarrant County, Texas (the "Facility") that has one service connection and serves at least 25 people per day for at least 60 days per year.

2. During a record review conducted on August 19, 2013, TCEQ staff documented that the Respondent did not comply with the maximum contaminant level for total coliform during the months of June, July and August 2013.
3. The Respondent received notice of the violations on September 16, 2013.

II. CONCLUSIONS OF LAW

1. The Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Findings of Fact No. 2, the Respondent failed to comply with the maximum contaminant level for total coliform, in violation of 30 TEX. ADMIN. CODE § 290.109(f)(3) and TEX. HEALTH & SAFETY CODE § 341.031(a).
3. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049, the Commission has the authority to assess an administrative penalty against the Respondent for violations of the Texas Water Code and the Texas Health and Safety Code within the Commission's jurisdiction; for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
4. An administrative penalty in the amount of Five Hundred Seventeen Dollars (\$517) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. HEALTH & SAFETY CODE § 341.049(b). The Respondent has paid the Five Hundred Seventeen Dollar (\$517) administrative penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed an administrative penalty in the amount of Five Hundred Seventeen Dollars (\$517) as set forth in Section II, Paragraph 4 above, for violations of TCEQ rules and state statutes. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order completely resolve the violations set forth by this Agreed Order in this action. However, the Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations that are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: United States Army Corps of Engineers, Docket No. 2013-1806-PWS-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. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Agreed Order, begin complying with applicable coliform monitoring requirements by providing water that meets the provisions regarding microbial contaminants, in accordance with 30 TEX. ADMIN. CODE § 290.109. This provision will be satisfied upon six consecutive months of compliant monitoring and reporting.
 - b. Within 225 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.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 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:

Public Drinking Water Section Manager
Water Supply Division, MC 155
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

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. 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.

5. 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 the Respondent if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
6. 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.
7. 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.
8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
9. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. By law, the effective date of this Agreed Order is the third day after the mailing date, as provided by 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission


For the Executive Director

4/2/14
Date

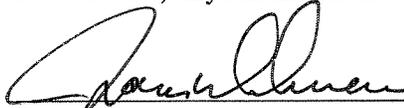
I, the undersigned, have read and understand the attached Agreed Order in the matter of United States Army Corps of Engineers. I am authorized to agree to the attached Agreed Order on behalf of United States Army Corps of Engineers, and do agree to the specified terms and conditions. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I understand that by entering into this Agreed Order, United States Army Corps of Engineers waives certain procedural rights, including, but not limited to, the right to formal notice of violations addressed by this Agreed Order, notice of an evidentiary hearing, the right to an evidentiary hearing, and the right to appeal. I agree to the terms of the Agreed Order in lieu of an evidentiary hearing. This Agreed Order constitutes full and final adjudication by the Commission of the violations set forth in this Agreed Order.

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

16 December 2013
Date

JASON W OWEN
Name (Printed or typed)
Authorized Representative of
United States Army Corps of Engineers

Natural Resource Manager
Title Benbrook / Joe Pool Lakes

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