

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE No. 48060
DOWNSTREAM ENVIRONMENTAL, L.L.C.
RN101662617
Docket No. 2014-0009-MSW-E

Order Type:

Findings Agreed Order

Findings Order Justification:

Absence of management practices designed to ensure compliance.

Media:

Municipal Solid Waste (MSW)

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

3737 Walnut Bend Lane, Houston, Harris County

Type of Operation:

Type V grease and grit trap municipal solid waste facility

Other Significant Matters:

Additional Pending Enforcement Actions: None

Past-Due Penalties: \$1,040.90 (2009-0862-MSW-E; referred to the AG)

Past-Due Fees: \$24,576.76 (SWF Acct. No. 0708693; referred to the AG);
\$685.62 (CWQ Acct. No. 23006359; referred for collection)

Other: None

Interested Third-Parties: None

Texas Register Publication Date: June 5, 2015

Comments Received: None

Penalty Information

Total Penalty Assessed: \$22,500

Deferred for Financial Inability to Pay: \$14,826

Total Paid to General Revenue: \$219

Total Due to General Revenue: \$7,455

Payment Plan: 35 payments of \$213 each

Compliance History Classifications:

Person/CN – Satisfactory

Site/RN – Satisfactory

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: September 2011

Investigation Information

Complaint Date(s): August 14 and 15, 2013
Complaint Information: Alleged that the secondary containment unit was full of sludge.
Date(s) of Investigation: September 5, 2013; January 7, 2014
Date(s) of NOV(s): June 12, 2013
Date(s) of NOE(s): December 4, 2013

Violation Information

Failed to prevent unauthorized storage, discharge and disposal of MSW (approx. 116 cubic yards of septic waste, grit trap waste, and grease trap waste was stored in the secondary containment unit, processing tanks, and concrete pads, and grit and grease trap waste was disposed of onto the ground from two containment areas) [30 TEX. ADMIN. CODE §§ 305.125(1), 330.7(a), 330.15(a) and (c) and 330.227, and MSW Permit No. 2298, Part No. 1, Sections II. and III].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 60 days:
 - a. Cease unauthorized storage, processing, disposal, and discharge of MSW; and
 - b. Remove all unauthorized MSW from the Facility and dispose of it at an authorized facility.
2. Within 90 days, submit a report which includes a summary of remediation activities that took place, confirming that all contaminated soil at the Facility has been properly remediated. Remediation activities shall address all areas where stained soil and soil contaminated with MSW was observed at the Facility, including but not limited to the areas within and surrounding the two containment areas (one each) located west and east of the processing tanks. The report shall include analytical results of soil confirmation sampling which characterizes the effectiveness of contaminated soil removal in all contaminated areas and documentation that contaminated soils have been disposed of in an authorized manner

Litigation Information

Date Petition(s) Filed: May 30, 2014
Date Answer Filed: June 12, 2014
SOAH Referral Date: July 16, 2014
Hearing Date(s):
Preliminary Hearing: September 18, 2014 (waived)
Evidentiary Hearing: March 3, 2015 (continued); April 30, 2015 (scheduled)
Settlement Date: April 29, 2015

Contact Information

TCEQ Attorneys: Jennifer Cook, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Rudy Calderon, Public Interest Counsel, (512) 239-6363
TCEQ Enforcement Coordinator: Danielle Porras, Enforcement Division, (713) 767-3682
TCEQ Regional Contact: Jason Ybarra, Houston Regional Office, (713) 767-3500
Respondent Contact: Mary Wimbish, Chief Executive Officer, DOWNSTREAM ENVIRONMENTAL, L.L.C., 2222 Bissonnet Street, Houston, Texas 77005
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

DATES	Assigned	9-Dec-2013		
	PCW	8-May-2015	Screening	23-Dec-2013
			EPA Due	

RESPONDENT/FACILITY INFORMATION	
Respondent	DOWNSTREAM ENVIRONMENTAL, L.L.C.
Reg. Ent. Ref. No.	RN101662617
Facility/Site Region	12-Houston
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	48060	No. of Violations	1
Docket No.	2014-0009-MSW-E	Order Type	Findings
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Danielle Porras
		EC's Team	Enforcement Team 7
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$15,000
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ADJUSTMENTS (+/-) TO SUBTOTAL 1		
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.		
Compliance History	50.0% Enhancement Subtotals 2, 3, & 7	\$7,500

Notes: Enhancement due to one NOV with same/similar violations, one agreed order containing a denial of liability and one order without a 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: \$571
 Approx. Cost of Compliance: \$11,410
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$22,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$22,500
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$22,500
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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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	\$22,500
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Screening Date 23-Dec-2013

Docket No. 2014-0009-MSW-E

PCW

Respondent DOWNSTREAM ENVIRONMENTAL, L.L.C.

Policy Revision 3 (September 2011)

Case ID No. 48060

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101662617

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

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>)	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	1	25%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgements or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

Enhancement due to one NOV with same/similar violations, one agreed order containing a denial of liability and one order without a denial of liability.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100%

Screening Date 23-Dec-2013

Docket No. 2014-0009-MSW-E

PCW

Respondent DOWNSTREAM ENVIRONMENTAL, L.L.C.

Policy Revision 3 (September 2011)

Case ID No. 48060

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN101662617

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 305.125(1), 330.7(a), 330.15(a) and (c), 330.227 and MSW Permit No. 2298, Part No. 1, Section II. (Facilities and Operations Authorized) and Section III. (Facility Design, Construction, and Operation)

Violation Description Failed to prevent unauthorized storage of municipal solid waste ("MSW"). Specifically, approximately 116 cubic yards of septic waste, grit trap waste, and grease trap waste was stored in the secondary containment provided for the waste storage and processing tanks, in a subdivided concrete pad located west of the processing tanks, and in a concrete pad located east of the processing tanks. Also, failed to prevent unauthorized discharge and disposal of MSW. Specifically, grit and grease trap waste was disposed of onto the ground from two containment areas (one each) located west and east of the processing tanks.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
Actual			x		15.0%
Potential					

>> Programmatic Matrix

Matrix Notes	Falsification	Harm			Percent
		Major	Moderate	Minor	
					0.0%

Human health or the environment has been exposed to significant amounts of pollutants which do not 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 4 Number of violation days 109

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$15,000

Four monthly events are recommended from the September 5, 2013, 2013 investigation to the December 23, 2013 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
	Extraordinary	
Ordinary		
N/A	x	(mark w th x)

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

Violation Subtotal \$15,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$571

Violation Final Penalty Total \$22,500

This violation Final Assessed Penalty (adjusted for limits) \$22,500

Economic Benefit Worksheet

Respondent DOWNSTREAM ENVIRONMENTAL, L.L.C.
Case ID No. 48060
Reg. Ent. Reference No. RN101662617
Media 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	\$11,410	5-Sep-2013	5-Sep-2014	1.00	\$571	n/a	\$571
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs
 Estimated cost to remediate the affected areas (\$10,000) and dispose of the MSW (\$1,410) at a facility authorized to accept the waste. The Date Required is the 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	\$11,410	TOTAL	\$571
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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 CN600896872, RN101662617, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

Customer, Respondent, or Owner/Operator: CN600896872, DOWNSTREAM ENVIRONMENTAL, L.L.C. **Classification:** SATISFACTORY **Rating:** 19.97
Regulated Entity: RN101662617, BR Perrin Plant **Classification:** SATISFACTORY **Rating:** 19.97
Complexity Points: 13 **Repeat Violator:** NO
CH Group: 14 - Other
Location: 3737 WALNUT BEND LN HOUSTON, TX 77042-4826, HARRIS COUNTY
TCEQ Region: REGION 12 - HOUSTON
ID Number(s): **STORMWATER** EPA ID TX0132811 **STORMWATER PERMIT** WQ0004940000
MUNICIPAL SOLID WASTE DISPOSAL PERMIT 2298

Compliance History Period: September 01, 2008 to August 31, 2013 **Rating Year:** 2013 **Rating Date:** 9/1/2013

Date Compliance History Report Prepared: December 18, 2013

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: December 18, 2008 to December 18, 2013

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

Name: Danielle Porras **Phone:** (713) 767-3682

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: 06/18/2010 ADMINORDER 2008-1660-WQ-E (1660 Order-Agreed Order With Denial)

Classification: Moderate

Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)
40 CFR Chapter 122, SubChapter D, PT 122, SubPT B 122.26(c)

Description: Failure to obtain an appropriate wastewater discharge permit. Specifically, it was documented that the sand and sludge area, the truck wash out area, and the grit basin area were exposed and could have the potential to discharge during a rain event. Due to exposure and contamination on site documented during the investigation, the Facility does not qualify for No Exposure Certificate (NEC) nor a Multi-Sector General Permit, therefore, an individual industrial permit is required.

2 Effective Date: 02/25/2011 ADMINORDER 2009-0862-MSW-E (Findings Order-After Hearing/Trial)

Classification: Major

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)
30 TAC Chapter 330, SubChapter A 330.15(a)(1)
30 TAC Chapter 330, SubChapter A 330.7(a)
30 TAC Chapter 330, SubChapter E 330.227

Rqmt Prov: Site Operating Plan 8.0 PERMIT

Description: Downstream Environmental failed to prevent the unauthorized discharge of wastes from the concrete solidification pad located across from the heated inlet tank. Several stains were documented along the wall indicating areas where waste had apparently overflowed and ran down the walls to the ground.

Classification: Major

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 330, SubChapter E 330.63

Rqmt Prov: II.F - Facilities Authorized PERMIT

Description: During the investigation, it was noted that Downstream utilizes a concrete pad subdivided by concrete retention walls to aid in solidification of wastes. There is no enclosure, cover or roof of any kind over the concrete pad; the waste that is stored within is exposed to open air.

Classification: Minor

Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)
30 TAC Chapter 330, SubChapter E 330.211

Rqmt Prov: Site Operating Plan 3.2 PERMIT

Description: During the site investigation, three roll-off boxes were documented near the facility entrance, on a concrete pad. The roll-off boxes were noted to be uncovered and leaking.

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

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

Item 1	April 02, 2012	(1012389)
Item 2	May 16, 2012	(1018754)
Item 3	June 07, 2012	(1026490)
Item 4	July 17, 2012	(1033821)
Item 5	August 24, 2012	(1040377)
Item 6	October 03, 2012	(1071162)
Item 7	November 05, 2012	(1071164)
Item 8	December 10, 2012	(1071163)
Item 9	August 30, 2013	(1127321)

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:	6/12/2013	(1109580)	CN600896872	
	Self Report?	NO			Classification: Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) 30 TAC Chapter 305, SubChapter F 305.125(17)			
	Description:	NON-RPT VIOS FOR MONIT PER OR PIPE			
	Self Report?	NO			Classification: Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) 30 TAC Chapter 305, SubChapter F 305.125(17)			
	Description:	NON-RPT VIOS FOR MONIT PER OR PIPE			
	Self Report?	NO			Classification: Moderate
	Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) 30 TAC Chapter 305, SubChapter F 305.125(17)			
	Description:	NON-RPT VIOS FOR MONIT PER OR PIPE			

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
DOWNSTREAM ENVIRONMENTAL,
L.L.C.;
RN101662617**

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§
§
§
§

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

AGREED ORDER

DOCKET NO. 2014-0009-MSW-E

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding DOWNSTREAM ENVIRONMENTAL, L.L.C. ("Respondent") under the authority of TEX. WATER CODE ch. 7 and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Respondent presented this Order to the Commission.

Respondent understands that it has certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, to request an evidentiary hearing, receive notice of an evidentiary hearing, and a right to appeal. By entering into this Order, Respondent agrees to waive all notice and procedural rights which might otherwise be authorized or required in this action.

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

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

FINDINGS OF FACT

1. Respondent operates a Type V grease and grit trap municipal solid waste facility located at 3737 Walnut Bend Lane in Houston, Harris County, Texas (the "Facility"). The Facility contains and/or involves the management of municipal solid waste ("MSW"), as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on September 5, 2013, and a record review conducted on January 7, 2014, an investigator documented that Respondent failed to prevent unauthorized storage, discharge and disposal of MSW. Specifically, approximately 116 cubic yards of septic waste, grit trap waste, and grease trap waste was stored in the secondary containment provided for the waste storage and processing tanks, in a subdivided concrete pad located west of the processing tanks, and in a concrete pad located east of the processing tanks. Also, grit and grease trap waste was disposed of onto the ground from two containment areas (one each) located west and east of the processing tanks.

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. 361 and the rules of the TCEQ.

2. As evidenced by Finding of Fact No. 2, Respondent failed to prevent unauthorized storage, discharge and disposal of MSW, in violation of 30 TEX. ADMIN. CODE §§ 305.125(1), 330.7(a), 330.15(a) and (c), 330.227, and MSW Permit No. 2298, Part No. 1, Sections II. and III.
3. Pursuant to TEX. WATER CODE § 7.051, TCEQ has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ'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 twenty-two thousand five hundred dollars (\$22,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Revenue Operations Section of the TCEQ's Financial Administration Division reviewed the financial documentation submitted by Respondent and determined that Respondent is unable to pay all or part of the penalty. Therefore, fourteen thousand eight hundred twenty-six dollars (\$14,826.00) of the penalty is deferred contingent upon Respondent's timely and satisfactory compliance with all the terms of this Order and shall be waived only upon full compliance with all the terms and conditions contained in this Order.

Respondent paid two hundred nineteen dollars (\$219.00) of the \$7,674.00 undeferred penalty. The remaining amount of seven thousand four hundred fifty-five dollars (\$7,455.00) of the undeferred penalty shall be payable in thirty-five (35) monthly payments of two hundred thirteen dollars (\$213.00) each. The first monthly payment shall be paid within 30 days after the effective date of this 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 Respondent fails to timely and satisfactorily comply with the payment requirements of this Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, Respondent's failure to meet the payment schedule of this Order and/or the acceleration of any remaining balance constitutes the failure by Respondent to timely and satisfactorily comply with all the terms of this Order and the Executive Director may demand payment of the deferred penalty amount.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty as set forth in Conclusion of Law No. 4 for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all requirements set forth in this Order resolve only 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 violations which are not raised here. Penalty payments shall be made payable to TCEQ and shall be sent with the notation "Re: DOWNSTREAM ENVIRONMENTAL, L.L.C., Docket No. 2014-0009-MSW-E" to:

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

2. Respondent shall undertake the following technical requirements:
 - a. Within 60 days after the effective date of this Order:
 - i. Cease unauthorized storage, processing, disposal, and discharge of MSW; and
 - ii. Remove all unauthorized MSW from the Facility and dispose of it at an authorized facility.
 - b. Within 90 days after the effective date of this Order:
 - i. Submit a report to the addresses listed in Ordering Provision No. 2.b.ii., which includes a summary of remediation activities that took place, confirming that all contaminated soil at the Facility has been properly remediated. Remediation activities shall address all areas where stained soil and soil contaminated with MSW was observed at the Facility, including but not limited to the areas within and surrounding the two containment areas (one each) located west and east of the processing tanks. The report shall include analytical results of soil confirmation sampling which characterizes the effectiveness of contaminated soil removal in all contaminated areas and documentation that contaminated soils have been disposed of in an authorized manner; and
 - ii. Submit written certification to demonstrate compliance with Ordering Provisions No. 2.a. The certification shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, shall be signed by Respondent, and shall include the following certification language:

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

Respondent shall submit the written 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:

Waste Section Manager
Houston Regional Office
Texas Commission on Environmental Quality
5425 Polk Street, Suite H
Houston, Texas 77023-1452

3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by 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 Facility operations referenced in this Order.
5. 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. Extension requests shall be sent to the Order Compliance Team at the address listed above.
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. This Order, issued by the Commission, shall not be admissible against Respondent in a civil proceeding, unless the proceeding is brought by the Office of the Attorney General of the State of Texas ("OAG") to: (1) enforce the terms of this Order, or (2) pursue violations of a statute within TCEQ's jurisdiction, or of a rule adopted or an order or permit issued by TCEQ under such a statute. The Executive Director may, without further notice or hearing, refer this matter to the OAG for further enforcement proceedings if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
8. The provisions of this Order are deemed severable, and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable.
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. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this 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 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.

11. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Order is the date of hand delivery of the fully executed Order to Respondent, or three days after the date on which the Commission mails a copy of the fully executed Order to Respondent, whichever is earlier. The Chief Clerk shall provide a copy of the fully executed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

[Signature]
For the Executive Director

July 2, 2015
Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions in this Order and/or failure to timely pay the penalty amount may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, I understand that any falsification of any compliance documents may result in criminal prosecution.

Mary Wimbish
Signature - Mary Wimbish, Chief Executive Officer
DOWNSTREAM ENVIRONMENTAL, L.L.C.
2222 Bissonnet Street
Houston, Texas 77005

4/29/15
Date

If mailing address has changed, please check this box and provide the new address below:

DOWNSTREAM ENVIRONMENTAL

Pg 6
MW