

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2007-0152-MSW-E TCEQ ID: RN100733138 CASE NO.: 32506**  
**RESPONDENT NAME: FORT WORTH EXCAVATING, INC.**

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input checked="" type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 5265 Shelby Road, Fort Worth, Tarrant County

**TYPE OF OPERATION:** Unauthorized municipal solid waste disposal site

**SMALL BUSINESS:**  Yes  No

**OTHER SIGNIFICANT MATTERS:** There are eight complaints, alleging excessive amounts of dust leaving the site and unauthorized disposal of wood, mulch, and other debris. There are no additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** Eight complaints were received but the complainants have not indicated a desire to speak at agenda or protest this action. No one other than the ED and the Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired June 15, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Kari L. Gilbreth, Litigation Division, MC 175, (512) 239-1320  
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Mr. Clinton Sims, Waste Enforcement Section, MC 169, (512) 239-6933

**TCEQ Regional Contact:** Mr. Sam Barrett, DFW Regional Office, MC R-4, (817) 588-5903

**Respondent:** Mr. Frank Stegient, President, Fort Worth Excavating, Inc., 611 9<sup>th</sup> Avenue, Fort Worth, Texas 76104

**Respondent's Attorney:** Mr. Lane Odom, Attorney at Law, Berry, Odom and Rabinowitz LLP, 611 9<sup>th</sup> Avenue, Fort Worth, Texas 76104

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Dates of Complaints Relating to this Case:</b>                      March 18, 2004; March 10, 2005; February 7, 2006; and July 14, 2006.</p> <p><b>Date of Investigation Relating to this Case:</b>                      December 15, 2006</p> <p><b>Date of NOE Relating to this Case:</b>                      January 23, 2007</p> <p><b>Background Facts:</b>                      The EDRP was filed December 20, 2007. The Respondent filed an answer and the case was referred to SOAH. The preliminary hearing was waived and the parties exchanged discovery. Settlement was achieved and an agreed order was signed March 31, 2009.</p> <p><b>Current Compliance Status:</b>                      Not yet in compliance.</p> <p><b>MSW:</b>                      Failed to prevent the unauthorized disposal of municipal solid waste [30 TEX. ADMIN. CODE § 330.15(c)].</p>	<p><b>Total Assessed:</b> \$15,900</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Paid/Due to General Revenue:</b>                      \$675/\$15,225</p> <p>The Respondent paid \$675 of the administrative penalty. The remaining amount of \$15,225 shall be payable in 35 monthly payments of \$435 each.</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p> <p><b>Findings Order Justification:</b>                      Environmental receptors have been exposed to pollutants which exceed levels that are protective.</p>	<p><b>Ordering Provision(s):</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Immediately, cease accepting or disposing of any additional municipal solid waste at the Site.</li> <li>2. Within 60 days, remove all municipal solid waste and dispose of the wastes at an authorized facility.</li> <li>3. Within 75 days, submit written certification to demonstrate compliance with Ordering Provision Nos. 1 and 2.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision December 8, 2006

TCEQ

DATES	Assigned	29-Jan-2007	Screening	31-Jan-2007	EPA Due	
	PCW	22-Mar-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	Fort Worth Excavating, Inc.		
Reg. Ent. Ref. No.	RN100733138		
Facility/Site Region	4 - Dallas / Fort Worth	Major/Minor Source	Minor

<b>CASE INFORMATION</b>				
Enf./Case ID No.	32506	No. of Violations	1	
Docket No.	2007-0152-MSW-E	Order Type	Findings	
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Clinton Sims	
Multi-Media		EC's Team	EnforcementTeam 8	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

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

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

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

Compliance History 9% Enhancement Subtotals 2, 3, & 7 \$900

Notes

The Respondent received one NOV for a similar violation and two NOVs for dissimilar violations at this site in the past five years.

Culpability

No

0% Enhancement

Subtotal 4

\$0

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply

0% Reduction

Subtotal 5

\$0

Extraordinary	Before NOV	NOV to EDPRP/Settlement Offer
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria.

Total EB Amounts	\$80,137
Approx. Cost of Compliance	\$1,300,000

50% Enhancement\*

\*Capped at the Total EB \$ Amount

Subtotal 6

\$5,000

**SUM OF SUBTOTALS 1-7**

Final Subtotal

\$15,900

**OTHER FACTORS AS JUSTICE MAY REQUIRE**

Adjustment

\$0

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount

\$15,900

**STATUTORY LIMIT ADJUSTMENT**

Final Assessed Penalty

\$15,900

**DEFERRAL**

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**

\$15,900

Screening Date 31-Jan-2007

Docket No. 2007-0152-MSW-E

PCW

Respondent Fort Worth Excavating, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32506

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN100733138

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

### Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	1	5%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	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 (number of judgements or consent decrees meeting criteria)	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 (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	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 (number of audits for which notices were submitted)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	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) 9%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

The Respondent received one NOV for a similar violation and two NOVs for dissimilar violations at this site in the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 9%

Screening Date 31-Jan-2007

Docket No. 2007-0152-MSW-E

PCW

Respondent Fort Worth Excavating, Inc.

Policy Revision 2 (September 2002)

Case ID No. 32506

PCW Revision December 8, 2006

Reg. Ent. Reference No. RN100733138

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 330.15(c)

Violation Description Failed to prevent the unauthorized disposal of municipal solid waste, as documented during an investigation conducted December 15, 2006. Specifically, approximately 100,000 cubic yards of municipal solid waste including brush, construction and demolition waste, and mulch were disposed of at the unauthorized site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	x			50%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

Matrix Notes Human health or the environment has been exposed to significant amounts of pollutants as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 2 185 Number of violation days

daily	
monthly	x
quarterly	
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$10,000

Two monthly events are recommended based on the December 15, 2006 investigation date to the January 31, 2007 screening date.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$80,137

Violation Final Penalty Total \$15,900

This violation Final Assessed Penalty (adjusted for limits) \$15,900

## Economic Benefit Worksheet

**Respondent** Fort Worth Excavating, Inc.  
**Case ID No.** 32506  
**Reg. Ent. Reference No.** RN100733138  
**Media** Municipal Solid Waste  
**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				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System					\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$1,300,000	15-Dec-2006	9-Mar-2008	1.2	\$80,137	n/a	\$80,137
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove and dispose of the waste at an authorized facility (\$13 per cubic yard). Date Required is the investigation date and Final Date is the estimated date of compliance.

### Avoided Costs

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

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$1,300,000

TOTAL

\$80,137

# Compliance History

Customer/Respondent/Owner-Operator:	CN600419923 Fort Worth Excavating, Inc.	Classification: AVERAGE	Rating: 3.50
Regulated Entity:	RN100733138 FORT WORTH EXCAVATING	Classification: AVERAGE	Site Rating: 4.50
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED	ID NUMBER	455040173
	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	TA1189L
Location:	STORMWATER	PERMIT	TXR05R611
	5265 SHELBY RD, FORT WORTH, TX, 76140	Rating Date: September 01 06	Repeat Violator: NO
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	January 30, 2007		
Agency Decision Requiring Compliance	Enforcement		
Compliance Period:	January 30, 2002 to January 30, 2007		

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Clinton Sims Phone: 512-239-6933

## Site Compliance History Components

- |  |            |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes        |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No         |
| 3. If Yes, who is the current owner?   | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)?  | N/A        |
| 5. When did the change(s) in ownership occur?  | N/A        |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 08/09/2004 (287556)  
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |   |                          |
|--------------|---|--------------------------|
| Date:        | 11/30/2006 (455074)   |                          |
| Self Report? | NO  | Classification: Moderate |
| Citation:    | 30 TAC Chapter 116, SubChapter B 116.110(a)<br>5C THC Chapter 382, SubChapter A 382.0518(a)<br>5C THC Chapter 382, SubChapter A 382.085(b)        |                          |
| Description: | Failure to obtain a permit or satisfy the conditions of a permit-by-rule (PBR) for facilities comprised of sand and gravel processing operations. |                          |
| Date:        | 04/20/2004 (266524)   |                          |
| Self Report? | NO  | Classification: Minor    |
| Citation:    | 30 TAC Chapter 328, SubChapter A 328.5(b)[G]  |                          |
| Description: | Failure to submit a core data form and a notice of intent prior to conducting recycling activities.   |                          |
| Self Report? | NO  | Classification: Minor    |
| Citation:    | 30 TAC Chapter 328, SubChapter A 328.2(5)(C)(i)   |                          |
| Description: | Failure to maintain documentation on the amount of metals being recycled.   |                          |
| Self Report? | NO  | Classification: Minor    |
| Citation:    | 30 TAC Chapter 330, SubChapter A 330.4(f)   |                          |
| Description: | Failure to prevent unauthorized waste from being disposed in a clean fill site.   |                          |

Self Report? NO Classification: Minor  
Citation: 30 TAC Chapter 328, SubChapter A 328.5(e)  
Description: Failure to prepare and maintain a fire prevention and suppression plan.  
Date: 08/28/2003 (149503)

Self NO Classification: Major  
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)  
Description: Failure to obtain authorization to discharge storm water associated with industrial activity.

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  
FORT WORTH  
EXCAVATING, INC.;  
RN100733138**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

**AGREED ORDER  
DOCKET NO. 2007-0152-MSW-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Fort Worth Excavating, Inc. ("Fort Worth Excavating") 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 Fort Worth Excavating represented by Lane Odom of the law firm of Berry, Odom and Rabinowitz LLP, presented this agreement to the Commission.

Fort Worth Excavating 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, Fort Worth Excavating agrees to waive all notice and procedural rights.

It is further understood and agreed that this Agreed Order represents the complete and fully-integrated agreement 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 Fort Worth Excavating.

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

**FINDINGS OF FACT**

1. Fort Worth Excavating owns and operates an unauthorized municipal solid waste disposal site on approximately 86 acres located at 5265 Shelby Road, Fort Worth, Tarrant County, Texas (the "Site").

2. The Facility involves the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an investigation conducted on December 15, 2006, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Fort Worth Excavating failed to prevent the unauthorized disposal of municipal solid waste. Specifically, approximately 100,000 cubic yards of municipal solid waste, including brush, construction and demolition waste, and mulch, were disposed of at the Site.
4. Fort Worth Excavating received notice of the violations on or about January 28, 2007.

### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Fort Worth Excavating is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Fort Worth Excavating failed to prevent the unauthorized disposal of municipal solid waste in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Fort Worth Excavating 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 fifteen thousand nine hundred dollars (\$15,900.00) is justified by the facts recited in this Agreed Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Fort Worth Excavating paid six hundred seventy-five dollars (\$675.00) of the administrative penalty. The remaining amount of fifteen thousand two hundred twenty-five dollars (\$15,225.00) of the administrative penalty shall be payable in 35 monthly payments of four hundred thirty-five dollars (\$435.00) each, pursuant to 30 TEX. ADMIN. CODE § 70.9(a). The first monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall be remitted not later than 30 days following the due date of the previous payment. If Fort Worth Excavating fails to timely and satisfactorily comply with the payment requirements of this Agreed 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, the failure of Fort Worth Excavating to meet the payment schedule of this Agreed Order constitutes the failure by Fort Worth Excavating to timely and satisfactorily comply with all of the terms of this Agreed Order.

### ORDERING PROVISIONS

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

1. Fort Worth Excavating is assessed an administrative penalty in the amount of fifteen thousand nine hundred dollars (\$15,900.00) as set forth in Conclusion of Law No. 4 for violations of TCEQ rules and state statutes. The payment of this administrative penalty and Fort Worth Excavating, Inc.'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 "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Fort Worth Excavating, Inc.; Docket No. 2007-0152-MSW-E" to:

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

2. Fort Worth Excavating shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, Fort Worth Excavating shall cease accepting or disposing of any additional municipal solid waste at the Site.
  - b. Within 60 days after the effective date of this Agreed Order, Fort Worth Excavating shall remove all municipal solid waste and dispose of the wastes at an authorized facility.
  - c. Within 75 days after the effective date of this Agreed Order, Fort Worth Excavating shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b.

The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

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

Fort Worth Excavating shall submit copies of the certification and documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and

Sam Barrett, Waste Section Manager  
Texas Commission on Environmental Quality  
Dallas/Fort Worth Regional Office  
2309 Gravel Drive  
Fort Worth, Texas 76118

3. The provisions of this Agreed Order shall apply to and be binding upon Fort Worth Excavating. Fort Worth Excavating ordered to give notice of this Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If Fort Worth Excavating 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, Fort Worth Excavating's failure to comply is not a violation of this Agreed Order. Fort Worth Excavating has the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Fort Worth Excavating shall notify the Executive Director within seven days after Fort Worth Excavating 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 Fort Worth Excavating shall be made in writing to the Executive Director. Extensions are not effective until Fort Worth Excavating receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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 Fort Worth Excavating if the Executive Director determines that Fort Worth Excavating has not complied with one or more of the terms or conditions in this Agreed Order.
7. 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.
8. This Agreed Order, issued by the Commission, shall not be admissible against Fort Worth Excavating 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.
9. This Agreed Order may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreed Order may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
10. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties. Pursuant to 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date is the date of hand-delivery of the Order to Fort Worth Excavating, or three days after the date on which the Commission mails notice of the Order to Fort Worth Excavating, whichever is earlier.

**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

*Bongson Perdue*  
For the Executive Director

5/13/2009  
Date

I, the undersigned, have read and understand the attached Agreed Order in the matter of Fort Worth Excavating, Inc. I represent that I am authorized to agree to the attached Agreed Order on behalf of Fort Worth Excavating, Inc., 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 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 Fort Worth Excavating's compliance history;
- Greater scrutiny of any permit applications submitted by Fort Worth Excavating;
- 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 against Fort Worth Excavating;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; 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.

*Frank Stegient*  
Signature

3-31-09  
Date

Frank Stegient  
Name (printed or typed)  
Authorized Representative of  
Fort Worth Excavating, Inc.

President  
Title