

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 59448
Noe Olivas Magallanes dba NM Trucking
RN110843166
Docket No. 2020-0798-MSW-E

Order Type:
Default Order

Media:
MSW

Small Business:
Yes

Location(s) Where Violation(s) Occurred:
Farm-to-Market Road 608 at Mile Marker 284, Roscoe, Fisher County (the “Emergency Response Site”)

Type of Operation:
a freight shipping trucking operation

Other Significant Matters:
Additional Pending Enforcement Actions: None
Past-Due Penalties: None
Past-Due Fees: None
Other: None
Interested Third-Parties: None

Texas Register Publication Date: August 19, 2022

Comments Received: None

Penalty Information

Total Penalty Assessed: \$6,562

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$6,562

Compliance History Classifications:

Person/CN - Not Applicable
Site/RN - Not Applicable

Major Source: No

Statutory Limit Adjustment: None

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Date(s) of Investigation: May 7, 2020

Date(s) of NOV(s): October 15, 2019

Date(s) of NOE(s): June 5, 2020

Violation Information

1. Failed to immediately abate and contain a discharge or spill. [TEX. WATER CODE § 26.121(a)(1) and 30 TEX. ADMIN. CODE § 327.5(a)].
2. Failed to submit written information, describing the details of the discharge or spill and supporting the adequacy of the response action, to the appropriate TCEQ regional manager within 30 working days of the discovery of the reportable discharge or spill. [30 TEX. ADMIN. CODE § 327.5(c)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

None

Technical Requirements:

1. Within 30 days, submit a spill incident report and supporting documentation describing the details of the August 27, 2019 spill at the Emergency Response Site and the adequacy of the response action.
2. Within 60 days:
 - a. Properly remove soil contaminated with diesel fuel, and dispose of it at an authorized facility.
 - b. Conduct an investigation to determine whether response actions are necessary under the Texas Risk Reduction Program (“TRRP”), 30 TEX. ADMIN. CODE ch. 350, and submit the investigation results to the Executive Director, via the Enforcement Division.
3. Within 180 days, submit written certification to demonstrate compliance with Technical Requirement Nos. 1 through 2.b.

Litigation Information

Date Petition(s) Filed: June 28, 2021; September 1, 2021

Date Green Card(s) Signed: unclaimed, unclaimed

Contact Information

TCEQ Attorneys: Taylor Pearson, Litigation Division, (512) 239-3400
Garrett Arthur, Public Interest Counsel, (512) 239-6363

TCEQ Litigation Agenda Coordinator: Katherine McKenzie, Litigation Division, (512) 239-2575

TCEQ Enforcement Coordinator: Stephanie McCurley, Enforcement Division, (512) 239-2607

TCEQ Regional Contact: Michael Taylor, Abilene Regional Office, (325) 698-6125

Respondent Contact: Noe Olivas Magallanes, 481 West Conastoga Lane Space E, Odessa, Texas 79766

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

DATES	Assigned	8-Jun-2020	Screening	12-Jun-2020	EPA Due	
	PCW	5-Feb-2021				

RESPONDENT/FACILITY INFORMATION	
Respondent	Noe Olivas Magallanes dba NM Trucking
Reg. Ent. Ref. No.	RN110843166
Facility/Site Region	3-Abilene
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	59448	No. of Violations	2
Docket No.	2020-0798-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Stephanie McCurley
		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	\$6,250
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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	5.0% Adjustment	Subtotals 2, 3, & 7	\$312
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Notes	Enhancement for one previous NOV with same/similar violations.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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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	\$808	*Capped at the Total EB \$ Amount
Estimated Cost of Compliance	\$10,688	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$6,562
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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	
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Final Penalty Amount	\$6,562
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$6,562
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DEFERRAL		Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$6,562
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Screening Date 12-Jun-2020

Docket No. 2020-0798-MSW-E

PCW

Respondent Noe Olivas Magallanes dba NM Trucking

Policy Revision 4 (April 2014)

Case ID No. 59448

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN110843166

Media Municipal Solid Waste

Enf. Coordinator Stephanie McCurley

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Number	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 judgments 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%
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)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one previous 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 12-Jun-2020

Docket No. 2020-0798-MSW-E

PCW

Respondent Noe Olivas Magallanes dba NM Trucking

Policy Revision 4 (April 2014)

Case ID No. 59448

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN110843166

Media Municipal Solid Waste

Enf. Coordinator Stephanie McCurley

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 327.5(a) and Tex. Water Code § 26.121(a)(1)

Violation Description Failed to immediately abate and contain a discharge or spill. Specifically, cleanup was not immediately conducted on a discharge of approximately 100 gallons of diesel fuel into Linn Creek that affected approximately 60 square feet of soil.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0.0%

Matrix Notes Human health or the environment has been exposed to insignificant amounts of pollutants that 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 4 290 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

Four quarterly events are recommended from the August 27, 2019 date the spill occurred to the June 12, 2020 screening date.

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	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 \$773

Violation Final Penalty Total \$5,250

This violation Final Assessed Penalty (adjusted for limits) \$5,250

Economic Benefit Worksheet

Respondent Noe Olivas Magallanes dba NM Trucking
Case ID No. 59448
Reg. Ent. Reference No. RN110843166
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	Costs Saved	EB Amount
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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	\$188	27-Aug-2019	3-Mar-2021	1.52	\$14	n/a	\$14
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$10,000	27-Aug-2019	3-Mar-2021	1.52	\$759	n/a	\$759

Notes for DELAYED costs

Estimated delayed cost to remove soil contaminated with diesel fuel, and dispose of it at an authorized facility (\$188). Estimated delayed cost to submit a report demonstrating the applicability of Texas Risk Reduction Program ("TRRP") to the Executive Director, and to comply with all applicable requirements of TRRP (\$10,000). The Dates Required are the date the spill occurred and the Final Dates are the estimated date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$10,188

TOTAL

\$773

Screening Date 12-Jun-2020

Docket No. 2020-0798-MSW-E

PCW

Respondent Noe Olivas Magallanes dba NM Trucking

Policy Revision 4 (April 2014)

Case ID No. 59448

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN110843166

Media Municipal Solid Waste

Enf. Coordinator Stephanie McCurley

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code § 327.5(c)

Violation Description

Failed to submit written information, describing the details of the discharge or spill and supporting the adequacy of the response action, to the appropriate TCEQ regional manager within 30 working days of the discovery of the reportable discharge or spill. Specifically, no written report had been submitted to the TCEQ for the spill of diesel fuel that occurred on August 27, 2019.

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

248 Number of violation days

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 NOE/NOV NOE/NOV to EDRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	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 \$35

Violation Final Penalty Total \$1,313

This violation Final Assessed Penalty (adjusted for limits) \$1,313

Economic Benefit Worksheet

Respondent Noe Olivas Magallanes dba NM Trucking
Case ID No. 59448
Reg. Ent. Reference No. RN110843166
Media Municipal Solid Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Costs Saved	EB Amount
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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	8-Oct-2019	3-Mar-2021	1.40	\$35	n/a	\$35

Notes for DELAYED costs

Estimated cost to submit a spill incident report and supporting documentation describing the details of the spill and the adequacy of the response action. The Date Required is the date the report was due and the Final Date is the estimated date of compliance.

Avoided Costs

ANNUALIZE 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				0.00	\$0	\$0	\$0
ONE-TIME avoided costs				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$500

TOTAL \$35

The TCEQ is committed to accessibility.

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



Compliance History Report

Compliance History Report for CN605694736, RN110843166, Rating Year 2019 which includes Compliance History (CH) components from September 1, 2014, through August 31, 2019.

Customer, Respondent, or Owner/Operator: CN605694736, Noe Olivas Magallanes **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN110843166, Emergency Response @ Farm-to-Market 608 Mile Marker 284 **Classification:** NOT APPLICABLE **Rating:** N/A

Complexity Points: N/A **Repeat Violator:** N/A

CH Group: 14 - Other

Location: Farm-to-Market Road 608 at Mile Marker 284 near Roscoe in Fisher County, Texas

TCEQ Region: REGION 03 - ABILENE

ID Number(s):
EMERGENCY RESPONSE ID NUMBER R03110843166

Compliance History Period: September 01, 2014 to August 31, 2019 **Rating Year:** 2019 **Rating Date:** 09/01/2019

Date Compliance History Report Prepared: June 10, 2020

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: June 10, 2015 to June 10, 2020

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

Name: Stephanie McCurley

Phone: (512) 239-2607

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO

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: 10/15/2019 (1597641)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 327 327.5(a)
Description: Failure to immediately abate and contain a spill, in accordance with 30 TAC §327.5(a).
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 327 327.5(c)
Description: Failure to submit a final spill report within 30 days of a spill incident, in accordance with 30 TAC §327.5(c).

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
NOE OLIVAS MAGALLANES DBA
NM TRUCKING;
RN110843166**

**§
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§**

**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2020-0798-MSW-E

On _____, the Texas Commission on Environmental Quality (“Commission” or “TCEQ”) considered the Executive Director’s Preliminary Report and Petition, filed pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Noe Olivas Magallanes dba NM Trucking (“Respondent”).

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

FINDINGS OF FACT

1. Respondent owns and operates a freight shipping and trucking operation at 481 West Conestoga Lane, Space E, in Odessa, Ector County, Texas, which caused a spill of contaminants located at Farm-to-Market Road 608 at Mile Marker 284 near Roscoe in Fisher County, Texas (the “Emergency Response Site”). The Emergency Response Site involves or involved the management of municipal solid waste (“MSW”) as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on May 7, 2020, an investigator documented that Respondent:
 - a. Failed to immediately abate and contain a discharge or spill. Specifically, cleanup was not immediately conducted on a discharge of approximately 100 gallons of diesel fuel into Linn Creek that affected approximately 60 square feet of soil; and
 - b. Failed to submit written information, describing the details of the discharge or spill and supporting the adequacy of the response action, to the appropriate TCEQ regional manager within 30 working days of the discovery of the reportable discharge or spill. Specifically, no written report had been submitted to the TCEQ for the spill of diesel fuel that occurred on August 27, 2019.
3. The Executive Director filed the “Executive Director’s Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Noe Olivas Magallanes dba NM Trucking” (the “EDPRP”) in the TCEQ Chief Clerk’s office on June 28, 2021.
4. The EDPRP was mailed to Respondent’s last known address on June 28, 2021, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as “unclaimed.”
5. The Executive Director re-filed the EDPRP in the TCEQ Chief Clerk’s office on September 1, 2021.

6. By letter dated September 1, 2021, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP.
7. More than 20 days have elapsed since Respondent received notice of the EDPRP. Respondent failed to file an answer and failed to request a hearing.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to immediately abate and contain a discharge or spill, in violation of TEX. WATER CODE § 26.121(a)(1) and 30 TEX. ADMIN. CODE § 327.5(a).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to submit written information, describing the details of the discharge or spill and supporting the adequacy of the response action, to the appropriate TCEQ regional manager within 30 working days of the discovery of the reportable discharge or spill, in violation of 30 TEX. ADMIN. CODE § 327.5(c).
4. As evidenced by Findings of Fact Nos. 3 through 6, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 7, Respondent failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director.
6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondent for violations of state statutes within TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
7. An administrative penalty in the amount of six thousand five hundred sixty-two dollars (\$6,562.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

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

1. Respondent is assessed an administrative penalty in the amount of six thousand five hundred sixty-two dollars (\$6,562.00) for violations of state statutes and rules of the TCEQ. The payment of this penalty and Respondent's compliance with all the 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.
2. The penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to TCEQ and shall be sent with the notation "Re: Noe Olivas Magallanes dba NM Trucking; Docket No. 2020-0798-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

3. Respondent shall undertake the following technical requirements:
- a. Within 30 days after the effective date of this Order, submit a spill incident report and supporting documentation describing the details of the August 27, 2019 spill at the Emergency Response Site and the adequacy of the response action, in accordance with 30 TEX. ADMIN. CODE § 327.5. This report shall be submitted to the addresses listed in Ordering Provision No. 3.d;
 - b. Within 60 days after the effective date of this Order:
 - i. Properly remove soil contaminated with diesel fuel, and dispose of it at an authorized facility, in accordance with 30 TEX. ADMIN. CODE § 327.5; and
 - ii. Conduct an investigation to determine whether response actions are necessary under the Texas Risk Reduction Program ("TRRP"), 30 TEX. ADMIN. CODE ch. 350, and submit the investigation results to the Executive Director, via the Enforcement Division, to the address listed in Ordering Provision No. 3.d.
 - c. Within 180 days after the effective date of this Order, submit written certification, in accordance with Ordering Provision No. 3.d., to demonstrate compliance with Ordering Provision Nos. 3.a. through 3.b.ii;
 - d. The certifications required by these Ordering Provisions 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."

The written certifications and supporting documentation necessary to demonstrate compliance with these Ordering Provisions shall be sent to:

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

and:

Waste Section Manager
Regional Office
Texas Commission on Environmental Quality
1977 Industrial Boulevard
Abilene, Texas 79602-7833

- e. Respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the investigation results within 15 days after the date of such requests or by any other deadline specified in writing by the TCEQ;
 - f. If the Executive Director determines that response actions pursuant to 30 TEX. ADMIN. CODE ch. 350 are necessary, Respondent shall submit, by the deadline prescribed by the Executive Director, an Affected Property Assessment Report ("APAR"), pursuant to 30 TEX. ADMIN. CODE § 350.91, to the Executive Director at the address listed in Ordering Provision No. 3.d., and to any additional addresses as directed by the Executive Director;
 - g. If the Executive Director determines that the APAR indicates that additional response actions are necessary, within 150 days, Respondent shall comply with and perform, all applicable requirements of TRRP, which may include plans, reports, and notices under Subchapter E (30 TEX. ADMIN. CODE §§ 350.92 to 350.96); financial assurance (30 TEX. ADMIN. CODE § 350.33(l)); and institutional controls under Subchapter F (30 TEX. ADMIN. CODE § 350.111); and
 - h. If the Executive Director determines that the APAR indicates that additional response actions are necessary, Respondent shall submit, by the deadline prescribed by the Executive Director, written certification, in accordance with Ordering Provision No. 3.d., to demonstrate compliance with Ordering Provision No. 3.g.
4. All relief not expressly granted in this Order is denied.
 5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
 6. 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 Enforcement Division at the address listed above.
 7. 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.
 8. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
 9. 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.
 10. 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.

11. The Chief Clerk shall provide a copy of this fully executed Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



UNSWORN DECLARATION OF TAYLOR PEARSON

"On behalf of the Executive Director of the Texas Commission on Environmental Quality, the Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Noe Olivas Magallanes dba NM Trucking' (the "EDPRP") was filed in the TCEQ Chief Clerk's office on June 28, 2021.

The EDPRP was mailed to Respondent's last known address on June 28, 2021, via certified mail, return receipt requested, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed."

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the EDPRP was re-filed in the TCEQ Chief Clerk's office on September 1, 2021.

The EDPRP was mailed to Respondent's last known address on September 1, 2021, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondent received notice of the EDPRP in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

"My name is Taylor Wayne Pearson, and I am an employee of the following governmental agency: Texas Commission on Environmental Quality. I am executing this declaration as part of my assigned duties and responsibilities. I declare under penalty of perjury that the foregoing is true and correct."

Executed in Travis County,
State of Texas,
on the 13th day of July, 2022

A handwritten signature in blue ink that reads "Taylor Pearson". The signature is written in a cursive style with a long horizontal stroke at the end.

Declarant