

Atlas Oil Company
RN110264009
Docket No. 2021-0850-IHW-E

Order Type:

Findings Agreed Order

Findings Order Justification:

People or environmental receptors have been exposed to pollutants which exceed levels that are protective.

Media:

IHW

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

808 Bob White Road, Victoria, Victoria County

Type of Operation:

oil field service facility

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:

March 31, 2023

Comments Received:

None

Penalty Information

| | |
|--------------------------------|----------|
| Total Penalty Assessed: | \$63,750 |
|--------------------------------|----------|

| | |
|---------------------------------------|----------|
| Total Paid to General Revenue: | \$63,750 |
|---------------------------------------|----------|

| | |
|--------------------------------------|-----|
| Total Due to General Revenue: | \$0 |
|--------------------------------------|-----|

Compliance History Classifications:

Person/CN - UNCLASSIFIED
 Site/RN - UNCLASSIFIED

Major Source:

No

Statutory Limit Adjustment:

None

Applicable Penalty Policy:

January 28, 2021

Investigation Information

| | |
|---------------------------|-----|
| Complaint Date(s): | N/A |
|---------------------------|-----|

| | |
|----------------------------------|--|
| Date(s) of Investigation: | February 21, 2021 through April 28, 2021 |
|----------------------------------|--|

| | |
|---------------------------|-----|
| Date(s) of NOV(s): | N/A |
|---------------------------|-----|

| | |
|---------------------------|--------------|
| Date(s) of NOE(s): | June 9, 2021 |
|---------------------------|--------------|

Atlas Oil Company
RN110264009
Docket No. 2021-0850-IHW-E

Violation Information

Caused, suffered, allowed, or permitted the unauthorized disposal of Industrial Hazardous Waste into or adjacent to the water in the state [TEX. WATER CODE § 26.121(a) and 30 TEX. ADMIN. CODE § 335.4(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

1. Conducted immediate abatement measures by applying a sorbent boom in Dry Creek and began removing standing liquids from the creek via vacuum trucks on February 21, 2021;
2. Submitted a copy of the Safety Data Sheet for the diesel and a remediation plan to the Incident Command for review by February 28, 2021;
3. Removed approximately 124,716 gallons of water contaminated with red-dye diesel from the creek as of February 28, 2021;
4. Submitted a wildlife management plan for review to the TCEQ by March 4, 2021;
5. Flushed the underground stormwater conveyance with potable water to remove any residual diesel as of March 4, 2021;
6. Responded to a property owner who reported visible diesel was rising from the creek bed by applying containment booms and absorbent pads in the creek and drilling groundwater monitoring wells as of March 11, 2021;
7. Recovered a total of 11,367 gallons of diesel from the creek as of April 3, 2021;
8. Submitted a Tier 2 Screening Level Ecological Risk Assessment to TCEQ on January 8, 2022;
9. Submitted an Affected Property Assessment Report (“APAR”) to TCEQ on January 13, 2022;
10. Collected additional sediment and surface water samples from Dry Creek and its tributary in September 2022 and additional groundwater samples in September 2022 for laboratory analysis;
11. Submitted a Tier 2 Screening Level Ecological Risk Assessment Update to TCEQ on November 11, 2022; and
12. Submitted a Response to Comments Letter to TCEQ on November 11, 2022.

Technical Requirements:

1. If the Executive Director determines that the APAR indicates that additional response actions are necessary, within 180 days Respondent shall comply with, and perform, all applicable requirements of the Texas Risk Reduction Program 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
2. Within 240 days submit written certification to demonstrate compliance with Technical Requirement No. 1.

Atlas Oil Company
RN110264009
Docket No. 2021-0850-IHW-E

Litigation Information

Date Petition(s) Filed: May 25, 2022
Date(s) of Service: May 28, 2022
Date Answer(s) Filed: June 9, 2022
SOAH Referral Date: August 31, 2022
Hearing Date(s):
Preliminary hearing: November 10, 2022 (waived)
Settlement Date: February 10, 2023

Contact Information

TCEQ Attorneys: Casey Kurnath, Litigation Division, (512) 239-3400
Sheldon Wayne, 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: Tim Perdue, Corpus Christi Regional Office, (361) 881-6900
Respondent Contact: Michael Evans, President, Atlas Oil Company, 24501 Ecorse Road, Taylor, Michigan 48180
Respondent's Attorney: Mike DiGiglia, Gieger, Laborde & Laperouse L.L.C., 701 Poydras Street, Suite 4800, New Orleans, Louisiana 70139

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Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

| | | | | | | |
|--------------|-----------------|-------------|------------------|-------------|----------------|--|
| DATES | Assigned | 14-Jun-2021 | Screening | 24-Jun-2021 | EPA Due | |
| | PCW | 16-Nov-2021 | | | | |

| | |
|--|--|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | Atlas Oil Company dba Atlas Oil Victoria |
| Reg. Ent. Ref. No. | RN110264009 |
| Facility/Site Region | 14-Corpus Christi |
| Major/Minor Source | Minor |

| | | | |
|--|--------------------------------|------------------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 60971 | No. of Violations | 1 |
| Docket No. | 2021-0850-IHW-E | Order Type | Findings |
| Media Program(s) | Industrial and Hazardous Waste | Government/Non-Profit | No |
| Multi-Media | | Enf. Coordinator | Hailey Johnson |
| | | EC's Team | Enforcement Team 6 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$25,000 |

Penalty Calculation Section

| | | |
|---|-------------------|----------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$62,500 |
|---|-------------------|----------|

| | |
|--|--|
| ADJUSTMENTS (+/-) TO SUBTOTAL 1 | |
| Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage. | |

| | | | | |
|---------------------------|------|------------|--------------------------------|---------|
| Compliance History | 2.0% | Adjustment | Subtotals 2, 3, & 7 | \$1,250 |
|---------------------------|------|------------|--------------------------------|---------|

Notes: Enhancement for one NOV with dissimilar violations.

| | | | | | |
|--------------------|----|------|-------------|-------------------|-----|
| Culpability | No | 0.0% | Enhancement | Subtotal 4 | \$0 |
|--------------------|----|------|-------------|-------------------|-----|

Notes: The Respondent does not meet the culpability criteria.

| | | |
|--|-------------------|-----|
| Good Faith Effort to Comply Total Adjustments | Subtotal 5 | \$0 |
|--|-------------------|-----|

| | | | | |
|-------------------------|------|--------------|-------------------|-----|
| Economic Benefit | 0.0% | Enhancement* | Subtotal 6 | \$0 |
|-------------------------|------|--------------|-------------------|-----|

Total EB Amounts: \$5,658
 Estimated Cost of Compliance: \$100,000
 *Capped at the Total EB \$ Amount

| | | |
|-----------------------------|-----------------------|----------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$63,750 |
|-----------------------------|-----------------------|----------|

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

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

| | |
|-----------------------------|----------|
| Final Penalty Amount | \$63,750 |
|-----------------------------|----------|

| | | |
|-----------------------------------|-------------------------------|----------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$63,750 |
|-----------------------------------|-------------------------------|----------|

| | | | | |
|-----------------|------|-----------|------------|-----|
| DEFERRAL | 0.0% | Reduction | Adjustment | \$0 |
|-----------------|------|-----------|------------|-----|

Reduces the Final Assessed Penalty by the indicated percentage.

Notes: No deferral is recommended for Findings Orders.

| | |
|------------------------|----------|
| PAYABLE PENALTY | \$63,750 |
|------------------------|----------|

Screening Date 24-Jun-2021

Docket No. 2021-0850-IHW-E

PCW

Respondent Atlas Oil Company dba Atlas Oil Victoria

Policy Revision 5 (January 28, 2021)

Case ID No. 60971

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN110264009

Media Industrial and Hazardous Waste

Enf. Coordinator Hailey Johnson

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>) | 0 | 0% |
| | Other written NOVs | 1 | 2% |
| 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) 2%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one NOV with dissimilar violations.

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

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 2%

Screening Date 24-Jun-2021

Docket No. 2021-0850-IHW-E

PCW

Respondent Atlas Oil Company dba Atlas Oil Victoria

Policy Revision 5 (January 28, 2021)

Case ID No. 60971

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN110264009

Media Industrial and Hazardous Waste

Enf. Coordinator Hailey Johnson

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 335.4(1) and Tex. Water Code § 26.121(a)

Violation Description

Caused, suffered, allowed, or permitted the unauthorized disposal of industrial hazardous waste ("IHW") into or adjacent to the waters in the state. Specifically, approximately 18,094 gallons of red-dye diesel was released from an oil field frac tank at the Facility on February 21, 2021, which entered an underground stormwater conveyance and traveled approximately 0.5 miles before entering an above-ground stormwater conveyance and then entering Dry Creek in Victoria County, resulting in impacted groundwater and the killing of sunfish, red-eared sliders, and crawfish. A diesel odor was documented in the impacted area and a reddish sheen was documented on the surface water in the impacted area. Surface water samples taken from the impacted area were above the reporting limit for ethylbenzene, toluene, xylene, and total petroleum hydrocarbons (C6-C35).

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

| OR | Release | Harm | | | Percent |
|----|-----------|-------|----------|-------|---------|
| | | Major | Moderate | Minor | |
| | Actual | x | | | 50.0% |
| | Potential | | | | |

>> Programmatic Matrix

| | Falsification | Major | Moderate | Minor | Percent |
|--|---------------|-------|----------|-------|---------|
| | | | | | 0.0% |

Matrix Notes Human health or the environment has been exposed to pollutants which exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$12,500

\$12,500

Violation Events

Number of Violation Events 5 123 Number of violation days

| | |
|--------------|---|
| daily | |
| weekly | |
| monthly | x |
| quarterly | |
| semiannual | |
| annual | |
| single event | |

Violation Base Penalty \$62,500

Five monthly events are recommended from the February 21, 2021 date the discharge occurred to the June 24, 2021 screening date.

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 \$62,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$5,658

Violation Final Penalty Total \$63,750

This violation Final Assessed Penalty (adjusted for limits) \$63,750

Economic Benefit Worksheet

Respondent Atlas Oil Company dba Atlas Oil Victoria
Case ID No. 60971
Reg. Ent. Reference No. RN110264009
Media Industrial and Hazardous 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 |
|------------------|-----------|---------------|------------|-----|----------------|-------------|-----------|
|------------------|-----------|---------------|------------|-----|----------------|-------------|-----------|

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 | \$100,000 | 21-Feb-2021 | 10-Apr-2022 | 1.13 | \$5,658 | n/a | \$5,658 |
| Permit Costs | | | | 0.00 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.00 | \$0 | n/a | \$0 |

Notes for DELAYED costs

Estimated delayed cost to submit an Affected Property Assessment Report to the Executive Director and comply with all applicable requirements of the Texas Risk Reduction Program. The Date Required is the date the discharge occurred 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

\$100,000

TOTAL

\$5,658

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 CN601302110, RN110264009, Rating Year 2020 which includes Compliance History (CH) components from September 1, 2015, through August 31, 2020.

Customer, Respondent, or Owner/Operator: CN601302110, Atlas Oil Company **Classification:** UNCLASSIFIED **Rating:** -----

Regulated Entity: RN110264009, Atlas Oil Victoria **Classification:** UNCLASSIFIED **Rating:** -----

Complexity Points: 1 **Repeat Violator:** NO

CH Group: 14 - Other

Location: 808 Bob White Road, Victoria, Victoria County, Texas 77905-0618

TCEQ Region: REGION 14 - CORPUS CHRISTI

ID Number(s):
USED OIL EPA ID TXR000084636 **USED OIL** REGISTRATION A86385
PETROLEUM STORAGE TANK REGISTRATION REGISTRATION 90609 **IHW CORRECTIVE ACTION** SOLID WASTE REGISTRATION # (SWR) 90609

Compliance History Period: September 01, 2015 to August 31, 2020 **Rating Year:** 2020 **Rating Date:** 09/01/2020

Date Compliance History Report Prepared: July 20, 2021

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: July 20, 2016 to July 20, 2021

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Hailey Johnson **Phone:** (512) 239-1756

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.):

Item 1 November 22, 2019 (1610349)

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: 05/10/2021 (1708307)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter F 334.127(a)(1)
Description: Failed to register all aboveground storage tanks (ASTs) in existence on or after September 1, 1989, with the agency on authorized agency forms.

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

Component Appendices

Appendix A

All NOVs Issued During Component Period 7/20/2016 and 7/20/2021

| | | |
|---|--|--|
| 1 | Date: 05/10/2021 (1708307) | Classification: Moderate |
| | Self Report? NO | For Informational Purposes Only |
| | Citation: 30 TAC Chapter 334, SubChapter F 334.127(a)(1) | |
| | Description: Failed to register all aboveground storage tanks (ASTs) in existence on or after September 1, 1989, with the agency on authorized agency forms. | |

* NOVs applicable for the Compliance History rating period 9/1/2015 to 8/31/2020

Appendix B

All Investigations Conducted During Component Period July 20, 2016 and July 20, 2021

| | | |
|---------|---------------------|--|
| | | (1610349) |
| Item 1* | November 22, 2019** | For Informational Purposes Only |
| | | (1708307) |
| Item 2 | May 10, 2021 | For Informational Purposes Only |
| | | (1705375) |
| Item 3 | June 09, 2021 | For Informational Purposes Only |

* No violations documented during this investigation

**Investigation applicable for the Compliance History Rating period between 09/01/2015 and 08/31/2020.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION CONCERNING
ATLAS OIL COMPANY;
RN110264009

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER

DOCKET NO. 2021-0850-IHW-E

On _____, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Atlas Oil Company ("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, represented by Mike DiGiglia of the law firm Gieger, Laborde & Laperouse L.L.C., 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 an oil field service facility located at 808 Bob White Road in Victoria, Victoria County, Texas (the "Facility"). The Facility contains and/or involves the management of industrial hazardous waste ("IHW"), as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on February 21, 2021 through April 28, 2021, an investigator documented that Respondent caused, suffered, allowed, or permitted the unauthorized disposal of IHW into or adjacent to the water in the state. Specifically, approximately 18,094 gallons of red-dye diesel was released from an oil field frac tank at the Facility on February 21, 2021, which entered an underground stormwater conveyance and traveled approximately 0.5 miles before entering an above-ground stormwater conveyance and then entering Dry Creek in Victoria County, resulting in impacted groundwater and the killing of sunfish, red-eared sliders and crawfish. A diesel odor was documented in the impacted area and a reddish sheen was documented on the surface water in the impacted area. Surface water samples taken from the impacted area were above the reporting limit for ethylbenzene, toluene, xylene, and total petroleum hydrocarbons (C6-C35).
3. The Executive Director recognizes that Respondent has implemented the following corrective measures at the Facility:

- a. Conducted immediate abatement measures by applying a sorbent boom in Dry Creek and began removing standing liquids from the creek via vacuum trucks on February 21, 2021;
- b. Submitted a copy of the Safety Data Sheet for the diesel and a remediation plan to the Incident Command for review by February 28, 2021;
- c. Removed approximately 124,716 gallons of water contaminated with red-dye diesel from the creek as of February 28, 2021;
- d. Submitted a wildlife management plan for review to the TCEQ by March 4, 2021;
- e. Flushed the underground stormwater conveyance with potable water to remove any residual diesel as of March 4, 2021;
- f. Responded to a property owner who reported visible diesel was rising from the creek bed by applying containment booms and absorbent pads in the creek and drilling groundwater monitoring wells as of March 11, 2021;
- g. Recovered a total of 11,367 gallons of diesel from the creek as of April 3, 2021;
- h. Submitted a Tier 2 Screening Level Ecological Risk Assessment to TCEQ on January 8, 2022;
- i. Submitted an Affected Property Assessment Report ("APAR") to TCEQ on January 13, 2022;
- j. Collected additional sediment and surface water samples from Dry Creek and its tributary in September 2022 and additional groundwater samples in September 2022 for laboratory analysis;
- k. Submitted a Tier 2 Screening Level Ecological Risk Assessment Update to TCEQ on November 11, 2022; and
- l. Submitted a Response to Comments Letter to TCEQ on November 11, 2022.

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 caused, suffered, allowed, or permitted the unauthorized disposal of IHW into or adjacent to the waters in the state, in violation of TEX. WATER CODE § 26.121(a) and 30 TEX. ADMIN. CODE § 335.4(1).
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 sixty-three thousand seven hundred fifty dollars (\$63,750.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. Respondent paid sixty-three thousand seven hundred fifty dollars (\$63,750.00) of the penalty.

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.

2. Respondent shall undertake the following technical requirements:
 - a. If the Executive Director determines that the APAR indicates that additional response actions are necessary, within 180 days of the Executive Director's request, Respondent shall comply with, and perform, all applicable requirements of the Texas Risk Reduction Program ("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
 - b. Within 240 days after the effective date of this Order, submit written certification to demonstrate compliance with Ordering Provision 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."

The written certification 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
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5839

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 Enforcement Division 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. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Date



For the Executive Director


5/15/23
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.



Signature - Michael Evans, President
Atlas Oil Company
335 East Maple Road, Suite 200
Birmingham, Michigan 48009

2-10-23
Date

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