

Executive Summary – Enforcement Matter – Case No. 62735
HPA Texas Sub 2016 ML LLC
RN111135547
Docket No. 2022-0964-OSS-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

OSS

Small Business:

No

Location(s) Where Violation(s) Occurred:

OSSF 4260 Monroe Drive, Midlothian, Ellis County

Type of Operation:

On-site sewage facility ("OSSF"),

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: August 25, 2023

Comments Received: No

Penalty Information

Total Penalty Assessed: \$8,500

Amount Deferred for Expedited Settlement: \$1,700

Total Paid to General Revenue: \$6,800

Total Due to General Revenue: \$0

Payment Plan: N/A

Compliance History Classifications:

Person/CN - Unclassified

Site/RN - Unclassified

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: January 2021

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: July 5, 2022

Date(s) of NOE(s): July 15, 2022

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HPA Texas Sub 2016 ML LLC
RN111135547
Docket No. 2022-0964-OSS-E

Violation Information

1. Failed to obtain authorization prior to constructing, altering, repairing, extending, or operating an OSSF. Specifically, the original design of the OSSF was permitted for four spray heads but only two spray heads were observed in the disposal field. In addition, the spray head at the center of the property had been altered and was spraying 360 degrees when it was only permitted for 180 degrees [30 TEX. ADMIN. CODE § 285.3(a) and (b)(1) and TEX. HEALTH & SAFETY CODE §§ 366.004 and 366.051(a)].
2. Failed to provide the minimum required separation distance for an OSSF irrigation field of at least 50 feet from the edge of the surface application spray area to the creek and at least ten feet from the edge of the surface application spray area to the property line. Specifically, the edge of the spray area nearest to the OSSF system was less than 50 feet from the creek; effluent was entering the seasonal tributary. In addition, the spray head closest to Monroe Drive was less than 10 feet from the fence [30 TEX. ADMIN. CODE § 285.91(10)].
3. Failed to maintain an acceptable surface application area. Specifically, insufficient vegetation was in the disposal field as a result of pooling and inadequate sunlight due to the tree canopy [30 TEX. ADMIN. CODE § 285.33(d)(2)(A)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

N/A

Technical Requirements:

The Order will require the Respondent to:

- a. Within 30 days, submit an OSSF permit application, associated fees, and planning materials to obtain authorization to alter the OSSF located at the Site.
- b. Within 45 days, submit written certification of compliance with a.
- c. Within 90 days:
 - i. Obtain authorization to construct and/or approval to alter the OSSF located at the Site;
 - ii. Provide the minimum required separation distance for an OSSF irrigation field of at least 50 feet from the edge of the surface application spray area to the creek and at least 10 feet from the edge of the surface application spray area to the property line; and

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Docket No. 2022-0964-OSS-E

- iii. Provide an acceptable surface application area by removing the trees from the disposal area or moving the disposal to an area that supports vegetative growth.
- d. Within 105 days, submit written certification of compliance with c.

Contact Information

TCEQ Attorney: N/A

TCEQ Enforcement Coordinator: Cheryl Thompson, Enforcement Division, Enforcement Team 1, MC R-04, (817) 588-5865; Michael Parrish, Enforcement Division, MC 219, (512) 239-2548

Respondent: William Young, Officer, HPA Texas Sub 2016 ML LLC, 120 South Riverside Plaza, Suite 2000, Chicago, Illinois 60606

David Wood, Director of Resident Services, HPA Texas Sub 2016 ML LLC, 120 South Riverside Plaza, Suite 2000, Chicago, Illinois 60606

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

DATES	Assigned	18-Jul-2022	Screening	3-Aug-2022	EPA Due	
	PCW	5-Aug-2022				

RESPONDENT/FACILITY INFORMATION	
Respondent	HPA Texas Sub 2016 ML LLC
Reg. Ent. Ref. No.	RN111135547
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	62735	No. of Violations	3
Docket No.	2022-0964-OSS-E	Order Type	1660
Media Program(s)	On-Site Sewage Disposal	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Cheryl Thompson
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$8,500
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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	0.0% Adjustment	Subtotals 2, 3, & 7	\$0
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Notes: No adjustment for Compliance History.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts: \$210
 Estimated Cost of Compliance: \$2,500
 *Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$8,500
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0% Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$8,500
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$8,500
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DEFERRAL	20.0% Reduction	Adjustment	-\$1,700
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Reduces the Final Assessed Penalty by the indicated percentage.

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY	\$6,800
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Screening Date 3-Aug-2022

Docket No. 2022-0964-OSS-E

PCW

Respondent HPA Texas Sub 2016 ML LLC

Policy Revision 5 (January 28, 2021)

Case ID No. 62735

PCW Revision February 11, 2021

Reg. Ent. Reference No. RN111135547

Media On-Site Sewage Disposal

Enf. Coordinator Cheryl Thompson

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	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) 0%

>> 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

No adjustment for Compliance History.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 3-Aug-2022
Respondent HPA Texas Sub 2016 ML LLC
Case ID No. 62735
Reg. Ent. Reference No. RN111135547
Media On-Site Sewage Disposal
Enf. Coordinator Cheryl Thompson

Docket No. 2022-0964-OSS-E

PCW

Policy Revision 5 (January 28, 2021)

PCW Revision February 11, 2021

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 285.3(a) and (b)(1) and Tex. Health & Safety Code §§ 366.004 and 366.051(a)

Violation Description Failed to obtain authorization prior to constructing, altering, repairing, extending, or operating an on-site sewage facility ("OSSF"). Specifically, the original design of the OSSF was permitted for four spray heads but only two spray heads were observed in the disposal field. In addition, the spray head at the center of the property had been altered and was spraying 360 degrees when it was only permitted for 180 degrees.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
		x			10.0%

Matrix Notes

100% of the rule requirements were not met.

Adjustment \$4,500

\$500

Violation Events

Number of Violation Events 1 29 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$500

One monthly event is recommended from the July 5, 2022 investigation date to the August 3, 2022 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 \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$28

Violation Final Penalty Total \$500

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

Economic Benefit Worksheet

Respondent HPA Texas Sub 2016 ML LLC
Case ID No. 62735
Reg. Ent. Reference No. RN111135547
Media On-Site Sewage Disposal
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				0.00	\$0	n/a	\$0
Permit Costs	\$500	5-Jul-2022	12-Aug-2023	1.10	\$28	n/a	\$28
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated Permit Cost to submit a permit application for authorization to alter the OSSF located at 4260 Monroe Drive in Midlothian, Ellis County to the original permitted design. The Date Required is the investigation date, 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

\$28

Screening Date 3-Aug-2022 **Docket No.** 2022-0964-OSS-E **PCW**
Respondent HPA Texas Sub 2016 ML LLC *Policy Revision 5 (January 28, 2021)*
Case ID No. 62735 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN111135547
Media On-Site Sewage Disposal
Enf. Coordinator Cheryl Thompson

Violation Number

Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual	<input type="text"/>	<input type="text"/>	
Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>		

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0.0%"/>

Matrix Notes

Adjustment

Violation Events

Number of Violation Events Number of violation days

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

Violation Base Penalty

Good Faith Efforts to Comply Reduction

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input type="text" value="x"/>	<input type="text"/>

Notes

Violation Subtotal

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount **Violation Final Penalty Total**

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent HPA Texas Sub 2016 ML LLC
Case ID No. 62735
Reg. Ent. Reference No. RN111135547
Media On-Site Sewage Disposal
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)	\$1,000	16-Dec-2021	11-Oct-2023	1.82	\$91	n/a	\$91

Notes for DELAYED costs

Estimated Other cost to provide the minimum required separation distance for an OSSF irrigation field of 50 feet from the creek and 10 feet from the edge of the surface application spray area to the property line. The Date Required is the initial investigation date, and the Final Date is the estimated date of compliance.

Estimated Permit Cost is captured in Economic Benefit No. 1.

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

\$1,000

TOTAL

\$91

Screening Date 3-Aug-2022 **Docket No.** 2022-0964-OSS-E **PCW**
Respondent HPA Texas Sub 2016 ML LLC *Policy Revision 5 (January 28, 2021)*
Case ID No. 62735 *PCW Revision February 11, 2021*
Reg. Ent. Reference No. RN111135547
Media On-Site Sewage Disposal
Enf. Coordinator Cheryl Thompson

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code § 285.33(d)(2)(A)

Violation Description Failed to maintain an acceptable surface application area. Specifically, insufficient vegetation was in the disposal field as a result of pooling and inadequate sunlight due to the tree canopy.

Base Penalty \$5,000

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
					0.0%

Matrix Notes Human health or the environment will or could be exposed to significant amounts of pollutants that would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$4,750

\$250

Violation Events

Number of Violation Events 8 230 Number of violation days

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$2,000

Eight monthly events are recommended from the December 16, 2021 initial investigation date to the August 3, 2022 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 \$2,000

Economic Benefit (EB) for this violation **Statutory Limit Test**

Estimated EB Amount \$91 **Violation Final Penalty Total** \$2,000

This violation Final Assessed Penalty (adjusted for limits) \$2,000

Economic Benefit Worksheet

Respondent HPA Texas Sub 2016 ML LLC
Case ID No. 62735
Reg. Ent. Reference No. RN111135547
Media On-Site Sewage Disposal
Violation No. 3

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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	16-Dec-2021	11-Oct-2023	1.82	\$91	n/a	\$91

Notes for DELAYED costs

Estimated Other cost to provide an acceptable surface application area, remove the trees from the disposal area or move the disposal to an area that supports vegetative growth. The Date Required is the initial investigation date, 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

\$1,000

TOTAL

\$91



Compliance History Report

Compliance History Report for CN605970433, RN111135547, Rating Year 2022 which includes Compliance History (CH) components from September 1, 2017, through August 31, 2022.

Customer, Respondent, or Owner/Operator: CN605970433, Hpa Texas Sub 2016 MI LLC
Classification: UNCLASSIFIED
Rating: -----

Regulated Entity: RN111135547, OSSF 4260 MONROE DR
Classification: UNCLASSIFIED
Rating: -----

Complexity Points: 1
Repeat Violator: NO

CH Group: 14 - Other

Location: 4260 Monroe Drive in Midlothian, Ellis County, Texas

TCEQ Region: REGION 04 - DFW METROPLEX

ID Number(s):
WATER QUALITY NON PERMITTED ID NUMBER R04111135547

Compliance History Period: September 01, 2017 to August 31, 2022
Rating Year: 2022
Rating Date: 09/01/2022

Date Compliance History Report Prepared: May 02, 2023

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: May 02, 2018 to May 02, 2023

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.
Name: Cheryl Thompson
Phone: (817) 588-5685

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.

N/A

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
HPA TEXAS SUB 2016 ML LLC
RN111135547

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2022-0964-OSS-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding HPA Texas Sub 2016 ML LLC (the "Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 366 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent constructed, installed, altered, and/or repaired an on-site sewage facility ("OSSF"), as defined in 30 TEX. ADMIN. CODE § 285.2(45), located at 4620 Monroe Drive in Midlothian, Ellis County, Texas (the "Site"). Therefore, the Respondent is subject to TCEQ jurisdiction pursuant to TEX. WATER CODE ch. 26 and TEX. HEALTH & SAFETY CODE § 366.011.
2. The Executive Director and the Respondent agree that the TCEQ has jurisdiction to enter this Order pursuant to TEX. WATER CODE §§ 7.002, 7.051, and 7.073 and TEX. HEALTH & SAFETY CODE § 366.011, and that the Respondent is subject to TCEQ's jurisdiction. The TCEQ has jurisdiction in this matter pursuant to TEX. WATER CODE § 5.013 and TEX. HEALTH & SAFETY CODE § 366.011 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 366 and the rules of the TCEQ.
3. The occurrence of any violation is in dispute and the entry of this Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
4. An administrative penalty in the amount of \$8,500 is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent paid \$6,800 of the penalty and \$1,700 is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Order. The deferred amount shall be waived only upon full compliance with all the terms and conditions contained in this Order. If the Respondent fails to timely and satisfactorily comply with any of the terms or requirements

contained in this Order, the Executive Director may demand payment of all or part of the deferred penalty amount.

5. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a). Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
6. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Order.
7. 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.
8. 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.

II. ALLEGATIONS

During an investigation at the Site conducted on July 5, 2022, an investigator documented that the Respondent:

1. Failed to obtain authorization prior to constructing, altering, repairing, extending, or operating an OSSF, in violation of 30 TEX. ADMIN. CODE § 285.3(a) and (b)(1) and TEX. HEALTH & SAFETY CODE §§ 366.004 and 366.051(a). Specifically, the original design of the OSSF was permitted for four spray heads but only two spray heads were observed in the disposal field. In addition, the spray head at the center of the property had been altered and was spraying 360 degrees when it was only permitted for 180 degrees.
2. Failed to provide the minimum required separation distance for an OSSF irrigation field of at least 50 feet from the edge of the surface application spray area to the creek and at least ten feet from the edge of the surface application spray area to the property line, in violation of 30 TEX. ADMIN. CODE § 285.91(10). Specifically, the edge of the spray area nearest to the OSSF system was less than 50 feet from the creek; effluent was entering the seasonal tributary. In addition, the spray head closest to Monroe Drive was less than 10 feet from the fence.
3. Failed to maintain an acceptable surface application area, in violation of 30 TEX. ADMIN. CODE § 285.33(d)(2)(A). Specifically, insufficient vegetation was in the

disposal field as a result of pooling and inadequate sunlight due to the tree canopy.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

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

1. The Respondent is assessed a penalty as set forth in Section I, Paragraph No. 4. The payment of this penalty and the Respondent's compliance with all of the requirements set forth in this Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: HPA Texas Sub 2016 ML LLC, Docket No. 2022-0964-OSS-E" to:

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

2. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, submit an OSSF permit application, associated fees, and planning materials to obtain authorization to alter the OSSF located at the Site, in accordance with 30 TEX. ADMIN. CODE § 285.3 to:

Water Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

Respond completely and adequately, as determined by TCEQ, to any requests for information concerning the permit application and address any deficiencies identified within 30 days of such request or by any other deadline specified in writing by TCEQ.

- b. Within 45 days after the effective date of this Order, submit written certification of compliance with Ordering Provision No. 2.a., in accordance with Ordering Provision No. 2.e. below.

- c. Within 90 days after the effective date of this Order:
 - i. Obtain authorization to construct and/or approval to alter the OSSF located at the Site, in accordance with 30 TEX. ADMIN. CODE § 285.3.
 - ii. Provide the minimum required separation distance for an OSSF irrigation field of at least 50 feet from the edge of the surface application spray area to the creek and at least 10 feet from the edge of the surface application spray area to the property line, in accordance with 30 TEX. ADMIN. CODE § 285.91.
 - iii. Provide an acceptable surface application area by removing the trees from the disposal area or moving the disposal to an area that supports vegetative growth, in accordance with 30 TEX. ADMIN. CODE § 285.33.
- d. Within 105 days after the effective date of this Order, submit written certification of compliance with Ordering Provision No. 2.c., in accordance with Ordering Provision 2.e. below.
- e. The certification required by Ordering Provision Nos. 2.b, and 2.d, shall include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance. The certification shall be signed by the 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 fines and imprisonment for knowing violations."

The certification shall be submitted to:

Enforcement Division, R-4
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

with a copy to:

Water Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Drive
Fort Worth, Texas 76118-6951

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 the Respondent. The 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.
5. If the 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, the Respondent's failure to comply is not a violation of this Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
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 the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Enforcement Division at the address listed above.
7. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
8. This 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.

9. 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

4/6/2024


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, if any, in this Order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the OAG 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 OAG of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

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



Signature

3/26/24

Date

DAVID WOOD

Name (Printed or typed)
Authorized Representative of
HPA Texas Sub 2016 ML LLC

DIRECTOR, OPERATIONS

Title

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

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