

| VIOLATION SUMMARY CHART: | | |
|--|--|--|
| VIOLATION INFORMATION | PENALTY CONSIDERATIONS | CORRECTIVE ACTIONS TAKEN/REQUIRED |
| <p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: December 22, 2005</p> <p>Date of NOE Relating to this Case: February 16, 2006</p> <p>Background Facts: On August 7, 2007, the staff attorney called the Respondent and discussed settling this matter. The staff attorney confirmed the Respondent's address and mailed an agreed order to the Respondent; however, the Respondent did not sign and return the agreed order, nor return any of the attorney's telephone calls thereafter. An EDPRP was filed on October 23, 2006, then re-filed on April 5, 2007. The Respondent received notice of the EDPRP on or about April 10, 2007. The Respondent has not filed an answer or requested a hearing.</p> <p>The Respondent does not owe any other penalties according to the Administrative Penalty Database Report</p> <p>WTR:</p> <p>Failed by operating the Facility on a contract basis without an adequate license or registration issued by the Commission [30 TEX. ADMIN. CODE § 30.381 (b) and TEX. HEALTH & SAFETY CODE § 341.034(a)].</p> | <p>Total Assessed: \$313</p> <p>Total Deferred: \$0</p> <p>Total Due to General Revenue: \$313</p> <p>This is a Default Order. The Respondent has not paid any of the assessed penalty, but will be required to do so under the terms of the Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor <input checked="" type="checkbox"/> N/A</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input type="checkbox"/> Average <input type="checkbox"/> Poor <input checked="" type="checkbox"/> N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p> | <p>Corrective Action(s) Taken</p> <p>The Executive Director recognizes that the Respondent has ceased operation of the Facility as of January 2006.</p> |



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

| | | | | | | |
|-------|----------|-------------|-----------|-------------|---------|--|
| DATES | Assigned | 21-Feb-2006 | Screening | 07-Mar-2006 | EPA Due | |
| | PCW | 09-Mar-2006 | | | | |

| | |
|--|------------------|
| RESPONDENT/FACILITY INFORMATION | |
| Respondent | Dennis A. Holmes |
| Reg. Ent. Ref. No. | RN103372447 |
| Facility/Site Region | 10-Beaumont |
| Major/Minor Source | Minor Source |

| | | | |
|---------------------------------|---------------------------|-------------------|--------------------|
| CASE INFORMATION | | | |
| Enf./Case ID No. | 28551 | No. of Violations | 1 |
| Docket No. | 2006-0265-WTR-E | Order Type | Findings |
| Media Program(s) | All Occupational Licenses | Enf. Coordinator | Yuliya Dunaway |
| Multi-Media | | EC's Team | Enforcement Team 2 |
| Admin. Penalty \$ Limit Minimum | \$0 | Maximum | \$2,500 |

Penalty Calculation Section

| | | |
|---|------------|-------|
| TOTAL BASE PENALTY (Sum of violation base penalties) | Subtotal 1 | \$250 |
|---|------------|-------|

ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

| | | | |
|---------------------------|----------------|--------------------|-----|
| Compliance History | 0% Enhancement | Subtotal 2, 3, & 7 | \$0 |
|---------------------------|----------------|--------------------|-----|

Notes: No penalty enhancement is recommended due to the Respondent's lack of compliance history.

| | | | | |
|--------------------|-----|-----------------|------------|------|
| Culpability | Yes | 25% Enhancement | Subtotal 4 | \$63 |
|--------------------|-----|-----------------|------------|------|

Notes: The Respondent previously was licensed with the Commission as a Class "C" water treatment operator.

| | | | |
|------------------------------------|--------------|------------|-----|
| Good Faith Effort to Comply | 0% Reduction | Subtotal 5 | \$0 |
|------------------------------------|--------------|------------|-----|

| | | |
|---------------|------------|------------------------------|
| | Before NOV | NOV to EDRP/Settlement Offer |
| Extraordinary | | |
| Ordinary | | |
| N/A | X | (mark with a small x) |

Notes: The Respondent does not meet a good faith criteria.

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

| | | |
|----------------------------|-------|-----------------------------------|
| Total EB Amounts | \$158 | *Capped at the Total EB \$ Amount |
| Approx. Cost of Compliance | \$150 | |

| | | |
|-----------------------------|----------------|-------|
| SUM OF SUBTOTALS 1-7 | Final Subtotal | \$313 |
|-----------------------------|----------------|-------|

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

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

Notes:

| | |
|-----------------------------|-------|
| Final Penalty Amount | \$313 |
|-----------------------------|-------|

| | | |
|-----------------------------------|------------------------|-------|
| STATUTORY LIMIT ADJUSTMENT | Final Assessed Penalty | \$313 |
|-----------------------------------|------------------------|-------|

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

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is offered for findings order.

| | |
|------------------------|-------|
| PAYABLE PENALTY | \$313 |
|------------------------|-------|

Screening Date 07-Mar-2006

Docket No. 2006-0265-WTR-E

PCW

Respondent Dennis A. Holmes

Policy Revision 2 (September 2002)

Case ID No. 28551

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN103372447

Media [Statute] All Occupational Licenses

Enf. Coordinator Yuliya Dunaway

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

| Component | Number of... | Enter Number Here | Adjust. |
|-------------------------------|--|-------------------|---------|
| NOVs | Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria) | 0 | 0% |
| | Other written NOVs | 0 | 0% |
| Orders | Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria) | 0 | 0% |
| | Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission | 0 | 0% |
| Judgments and Consent Decrees | Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria) | 0 | 0% |
| | Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government | 0 | 0% |
| Convictions | Any criminal convictions of this state or the federal government (number of counts) | 0 | 0% |
| Emissions | Chronic excessive emissions events (number of events) | 0 | 0% |
| Audits | Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were disclosed) | 0 | 0% |
| | Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed) | 0 | 0% |
| Please Enter Yes or No | | | |
| Other | Environmental management systems in place for one year or more | No | 0% |
| | Voluntary on-site compliance assessments conducted by the executive director under a special assistance program | No | 0% |
| | Participation in a voluntary pollution reduction program | No | 0% |
| | Early compliance with, or offer of a product that meets future state or federal government environmental requirements | No | 0% |

Adjustment Percentage (Subtotal 2) 0%

>> 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

No penalty enhancement is recommended due to the Respondent's lack of compliance history.

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

Screening Date 07-Mar-2006 **Docket No.** 2006-0265-WTR-E **PCW**
Respondent Dennis A. Holmes *Policy Revision 2 (September 2002)*
Case ID No. 28551 *PCW Revision May 19, 2005*
Reg. Ent. Reference No. RN103372447
Media [Statute] All Occupational Licenses
Enf. Coordinator Yuliya Dunaway
Violation Number
Primary Rule Cite(s)
Secondary Rule Cite(s)
Violation Description
Base Penalty

>> **Environmental, Property and Human Health Matrix**

| Release | Harm | | | Percent |
|-----------|----------------------|---|----------------------|----------------------------------|
| | Major | Moderate | Minor | |
| Actual | <input type="text"/> | <input type="text"/> | <input type="text"/> | <input type="text" value="10%"/> |
| Potential | <input type="text"/> | <input checked="" type="text" value="X"/> | <input type="text"/> | |

>> **Programmatic Matrix**

| Falsification | Major | Moderate | Minor | Percent |
|----------------------|----------------------|----------------------|----------------------|----------------------|
| <input type="text"/> |

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

| | | |
|--------------------------------|------------|---|
| mark only one use a small x | daily | <input type="text"/> |
| | monthly | <input type="text"/> |
| | quarterly | <input checked="" type="text" value="X"/> |
| | semiannual | <input type="text"/> |
| | annual | <input type="text"/> |

Violation Base Penalty

| Economic Benefit (EB) for this violation | Statutory Limit Test |
|---|---|
| Estimated EB Amount <input type="text" value="\$158"/> | Violation Final Penalty Total <input type="text" value="\$313"/> |
| This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$313"/> | |

Economic Benefit Worksheet

Respondent Dennis A. Holmes
 Case ID No. 28551
 Reg. Ent. Reference No. RN103372447
 Media [Statute] All Occupational Licenses
 Violation No. 1

| | |
|------------------|-----------------------|
| Percent Interest | Years of Depreciation |
| 5.0 | 15 |

| Item Description | Item Cost | Date Required | Final Date | Yrs | Interest Saved | Onetime Costs | EB Amount |
|--------------------------|-----------|---------------|------------|-----|----------------|---------------|-----------|
| Delayed Costs | | | | | | | |
| Equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Buildings | | | | 0.0 | \$0 | \$0 | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |
| Engineering/construction | | | | 0.0 | \$0 | \$0 | \$0 |
| Land | | | | 0.0 | \$0 | n/a | \$0 |
| Record Keeping System | | | | 0.0 | \$0 | n/a | \$0 |
| Training/Sampling | | | | 0.0 | \$0 | n/a | \$0 |
| Remediation/Disposal | | | | 0.0 | \$0 | n/a | \$0 |
| Permit Costs | | | | 0.0 | \$0 | n/a | \$0 |
| Other (as needed) | | | | 0.0 | \$0 | n/a | \$0 |

Notes for DELAYED costs

There are no delayed costs associated with this violation.

| Avoided Costs | | ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs) | | | | | |
|-------------------------------|-------|--|-------------|-----|-----|-------|-------|
| Disposal | | | | 0.0 | \$0 | \$0 | \$0 |
| Personnel | | | | 0.0 | \$0 | \$0 | \$0 |
| Inspection/Reporting/Sampling | | | | 0.0 | \$0 | \$0 | \$0 |
| Supplies/equipment | | | | 0.0 | \$0 | \$0 | \$0 |
| Financial Assurance [2] | | | | 0.0 | \$0 | \$0 | \$0 |
| ONE-TIME avoided costs [3] | \$150 | 22-Dec-2005 | 31-Jan-2006 | 1.0 | \$8 | \$150 | \$158 |
| Other (as needed) | | | | 0.0 | \$0 | \$0 | \$0 |

Notes for AVOIDED costs

The avoided cost includes the amount to properly register with the Commission as a public water system operator including submission of the application and payment of the registration fee, calculated from the date of investigation through the date the Respondent has ceased operation of the Facility.

Approx. Cost of Compliance **\$150**

TOTAL \$158

Compliance History

Customer/Respondent/Owner-Operator: CN601892805 HOLMES, DENNIS A Classification: N/A Rating: N/A
Regulated Entity: RN103372447 HOLMES, DENNIS A Classification: Site Rating:
ID Number(s):
Location:
TCEQ Region: REGION 10 - BEAUMONT
Date Compliance History Prepared: February 21, 2006
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: February 21, 2001 to February 21, 2006
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
Name: Yuliya Dunaway Phone: (210) 403-4077

Site Compliance History Components

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 of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
1 02/15/2006 (455164)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
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
DENNIS A. HOLMES,
RN103372447

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2006-0265-WTR-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty against the respondent. The respondent made the subject of this Order is Dennis A. Holmes ("Mr. Holmes").

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

FINDINGS OF FACT

1. Mr. Holmes operated a public water supply located at 4525 Brookside Drive, Vidor, Hardin County, Texas (the "Facility").
2. The Facility had 52 service connections and served at least 25 people per day for at least 60 days per year.
3. During an inspection conducted on December 22, 2005, a TCEQ Beaumont Regional Office investigator documented that Mr. Holmes operated the Facility on a contract basis without an adequate license or registration issued by the Commission.
4. Mr. Holmes received notice of the violation on or about February 21, 2006.
5. The Executive Director recognizes that Mr. Holmes has ceased operation of the Facility as of January 2006.
6. 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 of Dennis A. Holmes" (the "EDPRP") in the TCEQ Chief Clerk's office on October 23, 2006.

7. By letter dated October 23, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Holmes with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail. The first class mail has not been returned, indicating the respondent received notice of the EDPRP.
8. The Executive Director re-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 Dennis A. Holmes" (the "EDPRP") in the TCEQ Chief Clerk's office on April 5, 2007.
9. By letter dated April 5, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Holmes with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Mr. Holmes received notice of the EDPRP.
10. More than 20 days have elapsed since Mr. Holmes received notice of the EDPRP, provided by the Executive Director. Mr. Holmes failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.

CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Mr. Holmes is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 341 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Holmes operated the Facility on a contract basis without an adequate license or registration issued by the Commission, in violation of 30 TEX. ADMIN. CODE § 30.381(b) and TEX. HEALTH & SAFETY CODE § 341.034(a).
3. As evidenced by Finding of Fact Nos. 8 and 9, the Executive Director has timely served Mr. Holmes with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 10, Mr. Holmes has failed to file a timely answer to the EDPRP, as required by TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 and 30 TEX. ADMIN. CODE

§ 70.106, the Commission may enter a Default Order against Mr. Holmes and assess the penalty recommended by the Executive Director.

5. Pursuant to TEX. HEALTH & SAFETY CODE § 341.049 , the Commission has the authority to assess an administrative penalty against Mr. Holmes for violations of the Texas Health and Safety Code within the Commission’s jurisdiction for violations of rules adopted under such statutes; or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of three hundred thirteen dollars (\$313.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. 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. Mr. Holmes is assessed an administrative penalty in the amount of three hundred thirteen dollars (\$313.00) for violations of TEX. HEALTH & SAFETY CODE ch. 341 and rules of the TCEQ. The payment of this administrative penalty and Mr. Holmes’s compliance with all the terms and conditions set forth in this Order completely resolve 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 other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the “Texas Commission on Environmental Quality.” The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation “Re: Dennis A. Holmes; Docket No. 2006-0265-WTR-E” to:

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

2. All relief not expressly granted in this Order is denied.

3. The provisions of this Order shall apply to and be binding upon Mr. Holmes.
4. 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 Mr. Holmes shall be made in writing to the Executive Director. Extensions are not effective until Mr. Holmes receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
5. 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 Mr. Holmes if the Executive Director determines that Mr. Holmes has not complied with one or more of the terms or conditions in this Order.
6. 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.
7. The Chief Clerk shall provide a copy of this 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.

Dennis A. Holmes
Docket No. 2006-0265-WTR-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF SHAWN A. SLACK

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Shawn A. Slack. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I 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 Dennis A. Holmes” (the “EDPRP”) with the Office of the Chief Clerk on October 23, 2006.

I sent the EDPRP to Mr. Holmes at his last known address on October 23, 2006, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail. The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I re-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 Dennis A. Holmes” (the “EDPRP”) with the Office of the Chief Clerk on April 5, 2007.

I sent the EDPRP to Mr. Holmes at his last known address on April 5, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

More than 20 days have elapsed since Mr. Holmes received notice of the EDPRP. Mr. Holmes failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”

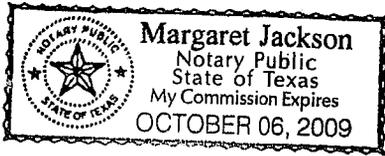


Shawn A. Slack, Attorney
Texas Commission on Environmental Quality

**Affidavit of
Page 2**

Before me, the undersigned authority, on this day personally appeared Shawn A. Slack, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 4 day of June A.D., 2007.



Margaret Jackson
Notary Stamp