EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2006-0830-PST-E **TCEQ ID:** RN101780070 **CASE NO.:** 29944

RESPONDENT NAME: Ben E. Keith Company dba Ben E. Keith Beers

ORDER TYPE:

X 1660 AGREED ORDER	__FINDINGS AGREED ORDER	__AMENDED ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__SHUTDOWN ORDER	__FINDINGS DEFAULT ORDER	__EMERGENCY ORDER	

CASE TYPE:

__AGRICULTURE	__AIR	__INDUSTRIAL AND HAZARDOUS WASTE	__MUNICIPAL SOLID WASTE
__OCCUPATIONAL CERTIFICATION	X PETROLEUM STORAGE TANKS	__PUBLIC WATER SUPPLY	__RADIOACTIVE WASTE
__MULTI-MEDIA (check all that apply)	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL	__USED OIL
__USED OIL FILTER	__WATER QUALITY		

SITE WHERE VIOLATION(S) OCCURRED: Ben E. Keith Beers, 2141 Cottonwood Street, Abilene, Taylor County

TYPE OF OPERATION: Wholesale distributing facility

SMALL BUSINESS: ___ Yes __X__ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired on February 26, 2007. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney/SEP Coordinator: None

TCEQ Enforcement Coordinator: Mr. Rajesh Acharya, Enforcement Division, Enforcement Section IV, MC 128, (512) 239-0577; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896

TCEQ Field Investigator: Ms. Patty Gough, Abilene Regional Office, MC R-03, (325) 698-9674

Respondent: Mr. Stewart D. Greenlee, Registered Agent, Ben E. Keith Company, 601 East 7th Street, Fort Worth, Texas 76113
Mr. Daryl Wigington, Director of Risk Management, Ben E. Keith Company dba Ben E. Keith Beers, 601 East 7th Street, Fort Worth, Texas 76113

Respondent's Attorney: Not represented by counsel on this enforcement matter

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint _X_ Routine __ Enforcement Follow-up __ Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** April 10, 2006 **Date of NOE Relating to this Case:** April 17, 2006 (NOE) **Background Facts:** This was a routine investigation. Four violations were documented. **WASTE** 1) Failed to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks ("USTs") [30 TEX. ADMIN. CODE § 37.815(a) and (b)]. 2) Failed to provide a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances [30 TEX. ADMIN. CODE § 334.50(a)(1)(A)]. 3) Failed to provide proper release detection for the piping associated with the USTs and did not conduct monthly monitoring or an annual piping tightness test [30 TEX. ADMIN. CODE § 334.50(b)(2)]. 4) Failed to assure that the dispensers were calibrated within an accuracy of six or less cubic inches for every five gallons of product withdrawn [30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(III)].	**Total Assessed:** $6,750 **Total Deferred:** $1,350 _X_ Expedited Settlement __ Financial Inability to Pay **SEP Conditional Offset:** $0 **Total Paid to General Revenue:** $5,400 **Site Compliance History Classification:** __ High _X_ Avg. __ Poor **Person Compliance History Classification:** __ High _X_ Avg. __ Poor **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 2002	**Corrective Actions Taken:** The Executive Director recognizes that Ben E. Keith has implemented the following corrective measures at the Facility: a. Submitted documentation that demonstrates acceptable financial assurance on June 26, 2006; b. Submitted documentation that demonstrates implementation of a release detection method for the USTs on June 26, 2006; c. Submitted documentation that demonstrates calibration of all dispensers at the Facility on June 26, 2006; and d. Submitted documentation that demonstrates successful tightness testing of the pressurized lines on June 26, 2006.

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) *PCW Revision May 19, 2005*

DATES					
Assigned	05-Sep-2006				
PCW	27-Sep-2006	Screening	08-Sep-2006	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Ben E. Keith Company dba Ben E. Keith Beers		
Reg. Ent. Ref. No.	RN101780070		
Facility/Site Region	3-Abilene	Major/Minor Source	Minor Source

CASE INFORMATION

Enf./Case ID No.	29944	No. of Violations	2
Docket No.	2006-0830-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Enf. Coordinator	Rajesh Acharya
Multi-Media		EC's Team	Enforcement Team 7
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) *Subtotal 1* $7,500

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 *Subtotals 2, 3, & 7* $0

Notes: No adjustment for compliance history.

Culpability No 0% Enhancement *Subtotal 4* $0

Notes: The respondent does not meet the culpability criteria.

Good Faith Effort to Comply 10% Reduction *Subtotal 5* -$750

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

Notes: The respondent came into compliance on June 26, 2006.

Economic Benefit 0% Enhancement* *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$2,746
Approx. Cost of Compliance	$2,800

SUM OF SUBTOTALS 1-7 Final Subtotal $6,750

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 $6,750

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty $6,750

DEFERRAL 20% Reduction Adjustment -$1,350

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

Notes: Deferral offered for expedited settlement.

PAYABLE PENALTY $5,400

Screening Date	08-Sep-2006	**Docket No.** 2006-0830-PST-E	**PCW**
Respondent	Ben E. Keith Company dba Ben E. Keith Beers		*Policy Revision 2 (September 2002)*
Case ID No.	29944		*PCW Revision May 19, 2005*
Reg. Ent. Reference No.	RN101780070		
Media [Statute]	Petroleum Storage Tank		
Enf. Coordinator	Rajesh Acharya		

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 judgements or consent decrees meeting criteria)*	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government *(number of counts)*	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 *(number of audits for which notices were*		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)

No

Adjustment Percentage (Subtotal 3) **0%**

>> Compliance History *Person* Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) **0%**

>> Compliance History Summary

Compliance History Notes No adjustment for compliance history.

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

PCW

Policy Revision 2 (September 2002)
PCW Revision May 19, 2005

Screening Date	08-Sep-2006
Docket No.	2006-0830-PST-E
Respondent	Ben E. Keith Company dba Ben E. Keith Beers
Case ID No.	29944
Reg. Ent. Reference No.	RN101780070
Media [Statute]	Petroleum Storage Tank
Enf. Coordinator	Rajesh Acharya
Violation Number	1
Primary Rule Cite(s)	30 Tex. Admin. Code § 37.815(a) and (b)
Secondary Rule Cite(s)	
Violation Description	Failed to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: 100% of the rule requirement was not met.

Adjustment -$7,500

Base Penalty Subtotal $2,500

Violation Events

Number of Violation Events: 2

mark only one use a small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $5,000

Two single events (one per tank) are recommended based upon the investigation conducted on April 10, 2006.

Economic Benefit (EB) for this violation

Estimated EB Amount $2,730

Statutory Limit Test

Violation Final Penalty Total $4,500

This violation Final Assessed Penalty (adjusted for limits) $4,500

Economic Benefit Worksheet

Respondent: Ben E. Keith Company dba Ben E. Keith Beers
Case ID No.: 29944
Reg. Ent. Reference No.: RN101780070
Media [Statute]: Petroleum Storage Tank
Violation No.: 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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							
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]	$1,300	10-Apr-2005	26-Jun-2006	2.0	$130	$2,600	$2,730
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs	Estimated cost to provide financial assurance for two petroleum USTs ($650 per tank). Date Required is one year prior to April 10, 2006 request for financial assurance documentation. Final Date is the compliance date.						

Approx. Cost of Compliance: $1,300

TOTAL: $2,730

PCW

Policy Revision 2 (September 2002)
PCW Revision May 19, 2005

Screening Date	08-Sep-2006
Docket No.	2006-0830-PST-E
Respondent	Ben E. Keith Company dba Ben E. Keith Beers
Case ID No.	29944
Reg. Ent. Reference No.	RN101780070
Media [Statute]	Petroleum Storage Tank
Enf. Coordinator	Rajesh Acharya
Violation Number	2
Primary Rule Cite(s)	30 Tex. Admin. Code § 334.50(a)(1)(A), 334.50(b)(2) and 334.50(d)(1)(B)(iii)(III)
Secondary Rule Cite(s)	
Violation Description	Failed to provide a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances. Failed to provide proper release detection for the piping associated with the USTs and did not conduct monthly monitoring or a annual piping tightness test. Failed to assure that the dispensers were calibrated within an accuracy of six or less cubic inches for every five gallons of product withdrawn.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			
Potential	x		

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes: Failure to ensure proper release detection may expose human health or the environment to significant amounts of pollutants which would exceed levels that are protective of human health or the environment.

Adjustment -$7,500

Base Penalty Subtotal $2,500

Violation Events

Number of Violation Events: 1

mark only one use a small x	
daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $2,500

One quarterly event is recommended from the April 10, 2006 investigation date to the June 26, 2006 compliance date.

Economic Benefit (EB) for this violation

Estimated EB Amount $16

Statutory Limit Test

Violation Final Penalty Total $2,250

This violation Final Assessed Penalty (adjusted for limits) $2,250

Economic Benefit Worksheet

Respondent	Ben E. Keith Company dba Ben E. Keith Beers
Case ID No.	29944
Reg. Ent. Reference No.	RN101780070
Media [Statute]	Petroleum Storage Tank
Violation No.	2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost (No commas or $)	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)	$1,500	10-Apr-2006	26-Jun-2006	0.2	$16	n/a	$16
Notes for DELAYED costs	Estimated cost to implement a release detection system at the Facility. Date Required is the investigation date. Final Date is the compliance date.						
Avoided Costs	ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)						
Disposal				0.0	$0	$0	$0
Personnel				0.0	$0	$0	$0
Inspection/Reporting/Sampling				0.0	$0	$0	$0
Supplies/equipment				0.0	$0	$0	$0
Financial Assurance [2]				0.0	$0	$0	$0
ONE-TIME avoided costs [3]				0.0	$0	$0	$0
Other (as needed)				0.0	$0	$0	$0
Notes for AVOIDED costs							

Approx. Cost of Compliance: $1,500

TOTAL: $16

Compliance History

Customer/Respondent/Owner-Operator:	CN600784250	BEN E KEITH COMPANY	Classification: AVERAGE	Rating: 2.00
Regulated Entity:	RN101780070	BEN E KEITH BEERS	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	PETROLEUM STORAGE TANK REGISTRATION	REGISTRATION	32708	
Location:	2141 COTTONWOOD ST, ABILENE, TX, 79601	Rating Date: 9/1/2005 Repeat Violator: NO		
TCEQ Region:	REGION 03 - ABILENE			
Date Compliance History Prepared:	September 09, 2006			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	September 09 , 2001 to September 09, 2006			

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

Name: Rajesh Acharya Phone: 512-239-0577

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? 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 judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

N/A

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
BEN E. KEITH COMPANY DBA BEN	§	
E. KEITH BEERS	§	**ENVIRONMENTAL QUALITY**
RN101780070		

AGREED ORDER
DOCKET NO. 2006-0830-PST-E

I. JURISDICTION AND STIPULATIONS

At its _____ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Ben E. Keith Company dba Ben E. Keith Beers ("Ben E. Keith") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and Ben E. Keith appear before the Commission and together stipulate that:

1. Ben E. Keith owns and operates a wholesale distributing facility at 2141 Cottonwood Street in Abilene, Taylor County, Texas (the "Facility").

2. Ben E. Keith's two underground storage tanks ("USTs") are not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission.

3. The Commission and Ben E. Keith agree that the Commission has jurisdiction to enter this Agreed Order, and that Ben E. Keith is subject to the Commission's jurisdiction.

4. Ben E. Keith received notice of the violations alleged in Section II ("Allegations") on or about April 22, 2006.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Ben E. Keith of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Six Thousand Seven Hundred Fifty Dollars ($6,750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Ben E. Keith has paid Five Thousand Four Hundred Dollars ($5,400) of the administrative penalty and One Thousand Three Hundred Fifty Dollars ($1,350) is deferred contingent upon Ben E. Keith's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If Ben E. Keith fails to timely

and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require Ben E. Keith to pay all or part of the deferred penalty.

7. 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.

8. The Executive Director of the TCEQ and Ben E. Keith have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that Ben E. Keith has implemented the following corrective measures at the Facility:

   a. Submitted documentation that demonstrates acceptable financial assurance on June 26, 2006;

   b. Submitted documentation that demonstrates implementation of a release detection method for the USTs on June 26, 2006;

   c. Submitted documentation that demonstrates calibration of all dispensers at the Facility on June 26, 2006; and

   d. Submitted documentation that demonstrates successful tightness testing of the pressurized lines on June 26, 2006.

10. 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 Ben E. Keith has not complied with one or more of the terms or conditions in this Agreed Order.

11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Facility, Ben E. Keith is alleged to have:

1. Failed to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs, in violation of 30 TEX. ADMIN. CODE § 37.815(a) and (b), as documented during an investigation conducted on April 10, 2006.

2. Failed to provide a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances, in violation of 30 TEX. ADMIN. CODE § 334.50(a)(1)(A), as documented during an investigation conducted on April 10, 2006.

3. Failed to provide proper release detection for the piping associated with the USTs and did not conduct monthly monitoring or an annual piping tightness test, in violation of 30 TEX. ADMIN. CODE § 334.50(b)(2), as documented during an investigation conducted on April 10, 2006.

4. Failed to assure that the dispensers were calibrated within an accuracy of six or less cubic inches for every five gallons of product withdrawn, in violation of 30 TEX. ADMIN. CODE § 334.50(d)(1)(B)(iii)(III), as documented during an investigation conducted on April 10, 2006.

III. DENIALS

Ben E. Keith generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that Ben E. Keith pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and Ben E. Keith's compliance with all the terms and conditions set forth in this Agreed 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. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Ben E. Keith Company dba Ben E. Keith Beers, Docket No. 2006-0830-PST-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. The provisions of this Agreed Order shall apply to and be binding upon Ben E. Keith. Ben E. Keith is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

3. This Agreed Order, issued by the Commission, shall not be admissible against Ben E. Keith in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.

5. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to Ben E. Keith, or three days after the date on which the Commission mails notice of the Order to Ben E. Keith, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____
For the Commission

_____ 3/19/07
For the Executive Director Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, 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 my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

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

_____ 11-20-2006
Signature Date

DARYL WIGINGTON Director of Risk Mgmt.
Name (Printed or typed) Title
Authorized Representative of
Ben E. Keith Company dba Ben E. Keith Beers

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.