

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2005-0700-MLM-E TCEQ ID NO. RN104474374 CASE NO.: 25187
RESPONDENT NAME: DAVID PRIESS AND RANDY PRIESS

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
CASE TYPE:		
<input checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p>SITE WHERE VIOLATION(S) OCCURRED: 5876 RR 386, Fredonia, Mason County</p> <p>TYPE OF OPERATION: Dry cleaning drop station</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired on January 2, 2007.No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Mr. Mark Curnutt, Litigation Division, MC 175, (512) 239-0624 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873 TCEQ Enforcement Coordinator: Mr. Tom Greimel, Enforcement Division, Section IV, TCEQ, MC 128, (512) 239-5690 TCEQ Regional Contact: Mr. Mark Newman, San Angelo Regional Office, MC R-8, (325) 655-9479 Respondent: Mr. David Priess and Mr. Randy Priess; 5876 RR 386, Fredonia, Mason, County, Texas 76842 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

<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: January 12, 2005, May 12, 2005.</p> <p>Date of NOE Relating to this Case: February 24, 2005 and June 17, 2005 NOE(s)</p> <p>Background Facts: The EDPRP was filed on September 26, 2006. The staff attorney attempted to contact the Respondents before filing the EDPRP and again before proceeding with a Default Order, but was unable to reach the Respondents. The Respondents have not filed an Answer or requested a hearing.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>MLM:</p> <p>1) Caused, suffered, or allowed outdoor burning in the State of Texas without authorization from the Commission [30 TEX. ADMIN. CODE §§ 111.201 and 111.219(7) and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2) Failed to dispose of municipal hazardous waste at an authorized facility [30 TEX. ADMIN. CODE §§ 335.2(a) and 335.43(a)].</p> <p>3) Failed to conduct a hazardous waste determination on the burned wire insulation hazardous waste stream and failed to meet treatment standards for lead prior to land disposal [30 TEX. ADMIN. CODE §§ 335.62 and 335.431(c) and 40 CFR §§ 262.11 and 268.40].</p>	<p>Total Assessed: \$25,000</p> <p>Total Deferred: \$0</p> <p>Total Paid to General Revenue: \$25,000 This is a Default Order. The Respondents have not actually paid any of the assessed penalty, but will be required to do so under the the terms of this proposed Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Avg. <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 1, 2002</p>	<p>Ordering Provisions:</p> <p>The Respondents shall:</p> <p>1) Immediately:</p> <p>a. Allow employees of the Commission access to the Site to conduct inspections for the purpose of investigating conditions relating to rules and regulations of the Commission; and</p> <p>b. Cease causing or allowing outdoor burning at the Site without first receiving authorization from the Commission.</p> <p>2) Within 30 days:</p> <p>a. Submit a report that includes a record regarding the generation and disposal of hazardous waste at the Site; and</p> <p>b. Conduct a hazardous waste determination on the burned wire insulation stream and determine if that waste is restricted from land disposal.</p> <p>3) Within 45 days, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 1.a. through 2.b.</p> <p>4) Within 90 days, submit an Affected Property Assessment Report to the Executive Director for approval. If response actions are necessary, comply with all applicable.</p> <p>5) Written notification shall be provided to the TCEQ San Angelo Regional Office at least 5 working days prior to conducting any on-site investigation, remedial, or monitoring activities in conjunction with Ordering Provision No. 4 to allow San Angelo Regional personnel the opportunity to observe the activities and to split any soil, sediment, groundwater, or surface water samples which may be collected.</p>
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4) Failed to dispose of municipal hazardous waste at an authorized facility [30 TEX. ADMIN. CODE §§ 335.2(a), 335.4, and 335.43(a)].

5) Failed to keep records of all hazardous waste activities regarding the quantities generated, stored, processed, and disposed [30 TEX. ADMIN. CODE § 335.9(a)(1)].

6) Within 105 days, submit written certification as described below, and include detailed supporting documentation including photographs, receipts and/or other records to demonstrate compliance with the Ordering Provision No. 4.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 03, 2005

DATES	Assigned	28-Feb-2005	Screening	04-Apr-2005	Priority Due	29-Apr-2005	EPA Due	
	PCW	05-May-2005						

RESPONDENT/FACILITY INFORMATION	
Respondent	David Priess and Randy Priess
Reg. Ent. Ref. No.	RN104474374
Facility/Site Region	8-San Angelo
Major/Minor Source	Minor Source

CASE INFORMATION			
Enf./Case ID No.	25187	No. of Violations	3
Docket No.	2005-0700-MLM-E	Order Type	Findings
Media Program(s)	Industrial and Hazardous Waste	Enf. Coordinator	Thomas Greimel
Multi-Media	Industrial and Hazardous Waste; Air Quality	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 \$12,000

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: The Respondent has no previous NOV's, enforcement orders, or judgments within the past five years.

Culpability No 0% Enhancement Subtotal 4 \$0

Notes: Does not meet culpability criteria.

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

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

Notes: The respondent is not yet in compliance.

Economic Benefit 0% Enhancement* Subtotal 6 \$0

Total EB Amounts	\$142	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$3,500	

SUM OF SUBTOTALS 1-7 Final Subtotal \$12,000

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 \$12,000

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty \$12,000

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 due to findings order.

PAYABLE PENALTY \$12,000

Screening Date 04-Apr-2005 **Docket No.** 2005-0700-MLM-E **PCW**
Respondent David Priess and Randy Priess *Policy Revision 2 (September 2002)*
Case ID No. 25187 *PCW Revision May 03, 2005*
Reg. Ent. Reference No. RN104474374
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Thomas Greimel

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 (<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 judgements 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</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%
<i>Please Enter Yes or No</i>			
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 The Respondent has no previous NOVs, enforcement orders, or judgments within the past five years.

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

Screening Date 04-Apr-2005

Docket No. 2005-0700-MLM-E

PCW

Respondent David Priess and Randy Priess

Policy Revision 2 (September 2002)

Case ID No. 25187

PCW Revision May 03, 2005

Reg. Ent. Reference No. RN104474374

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Thomas Greimel

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code §§ 111.201 & 111.219(7)

Secondary Rule Cite(s) Tex. Health & Safety Code § 382.085(b)

Violation Description
 The respondents caused, suffered or allowed outdoor burning in the State of Texas without authorization from the Commission, as documented during an investigation conducted on January 12, 2005. Specifically, charred remains including electrical wire insulation were observed in a pile of burned waste at the property.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

		Harm				
Release		Major	Moderate	Minor		
OR	Actual			X	Percent	10%
	Potential					

>> Programmatic Matrix

		Major	Moderate	Minor		
Falsification					Percent	

Matrix Notes
 Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 1

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

Violation Base Penalty \$1,000

One single penalty event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$20

Violation Final Penalty Total \$1,000

This violation Final Assessed Penalty (adjusted for limits) \$1,000

Economic Benefit Worksheet

Respondent David Priess and Randy Priess
 Case ID No. 25187
 Reg. Ent. Reference No. RN104474374
 Media [Statute] 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	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	\$500	12-Jan-2005	05-Nov-2005	0.8	\$20	n/a	\$20
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly dispose of the burned waste from the investigation date to the anticipated date of compliance.

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

TOTAL

Screening Date 04-Apr-2005	Docket No. 2005-0700-MLM-E	PCW
Respondent David Priess and Randy Priess	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 25187	<i>PCW Revision May 03, 2005</i>	
Reg. Ent. Reference No. RN104474374		
Media [Statute] Industrial and Hazardous Waste		
Enf. Coordinator Thomas Greimel		
Violation Number <input type="text" value="2"/>		
Primary Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code §§ 335.2(a) and 335.43(a)"/>	
Secondary Rule Cite(s)	<input type="text"/>	
Violation Description	<div style="border: 1px solid black; padding: 5px;"> Failure to dispose of municipal hazardous waste at an authorized facility, as documented during an investigation conducted on January 12, 2005. Specifically, hazardous waste was disposed at the respondent's property as a result of burning activities. Toxicity Characteristic Leaching Procedure (TCLP) test results of soil samples from the burn piles had lead (EPA hazardous waste ID no. D008; regulatory level 5.0 mg/l) levels of 6.3 mg/l, 57.1 mg/l, 150 mg/l and 59.6 mg/l. </div>	

Base Penalty

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

		Harm			
	Release	Major	Moderate	Minor	
OR	Actual	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
					Percent <input type="text" value="50%"/>

>> **Programmatic Matrix**

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

Matrix Notes

Human health or the environment has been exposed to significant amounts of pollutants which exceed levels that are protective of human health or environmental receptors.

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

		daily	<input type="checkbox"/>
		monthly	<input checked="" type="checkbox"/>
		quarterly	<input type="checkbox"/>
		semiannual	<input type="checkbox"/>
		annual	<input type="checkbox"/>
		single event	<input type="checkbox"/>

mark only one use a small x

Violation Base Penalty

Two monthly events are recommended from the January 12, 2005 investigation date to the March 8, 2005 screening date.

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 David Priess and Randy Priess
 Case ID No. 25187
 Reg. Ent. Reference No. RN104474374
 Media [Statute] Industrial and Hazardous Waste
 Violation No. 2

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	\$2,000	12-Jan-2005	05-Nov-2005	0.8	\$81	n/a	\$81
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimate cost to properly dispose of contaminated soil at an authorized facility from the investigation date to the anticipated date of compliance.

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 **\$2,000**

TOTAL \$81

Screening Date 04-Apr-2005 **Docket No.** 2005-0700-MLM-E **PCW**
Respondent David Priess and Randy Priess *Policy Revision 2 (September 2002)*
Case ID No. 25187 *PCW Revision May 03, 2005*
Reg. Ent. Reference No. RN104474374
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Thomas Greimel
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"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

daily	<input type="text"/>
monthly	<input type="text"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>

mark only one use a small x

Violation Base Penalty

Economic Benefit (EB) for this violation	Statutory Limit Test
Estimated EB Amount <input type="text" value="\$41"/>	Violation Final Penalty Total <input type="text" value="\$1,000"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$1,000"/>	

Economic Benefit Worksheet

Respondent David Priess and Randy Priess
 Case ID No. 25187
 Reg. Ent. Reference No. RN104474374
 Media [Statute] Industrial and Hazardous Waste
 Violation No. 3

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)	\$1,000	12-Jan-2005	05-Nov-2005	0.8	\$41	n/a	\$41

Notes for DELAYED costs
 Estimated cost to treat lead-contaminated wastes in order to meet treatment standards for land disposal and the estimated cost to conduct a hazardous waste determination on one hazardous waste stream from the investigation date to the anticipated date of compliance.

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

TOTAL

Compliance History

Customer/Respondent/Owner-Operator:	CN602753097 PRIESS, DAVID	Classification: AVERAGE	Rating: 3.010
Regulated Entity:	RN104474374 PRIESS PROPERTY	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	ID NUMBER	F1828
	INDUSTRIAL AND HAZARDOUS WASTE GENERATION	EPA ID	TXR000062471
Location:	5876 RR 386, FREDONIA, TX, 76842	Rating Date: 9/1/04 Repeat Violator: NO	
TCEQ Region:	REGION 08 - SAN ANGELO		
Date Compliance History Prepared:	April 05, 2005		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	April 05, 2000 to April 05, 2005		

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

Name: Thomas Greimel Phone: (512) 239-5690

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



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision May 03, 2005

DATES	Assigned	20-Jun-2005	Screening	02-Jul-2005	Priority Due	19-Aug-2005	EPA Due	
	PCW	19-Jul-2005						

RESPONDENT/FACILITY INFORMATION	
Respondent	David Priess and Randy Priess
Reg. Ent. Ref. No.	RN104474374
Facility/Site Region	8-San Angelo <
Major/Minor Source	Minor Source <

CASE INFORMATION			
Enf./Case ID No.	25187	No. of Violations	2
Docket No.	2005-0700-MLM-E	Order Type	Findings <
Media Program(s)	Industrial and Hazardous Waste <	Enf. Coordinator	Thomas Greimel
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	\$13,000
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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% Enhancement	Subtotals 2, 3, & 7	\$0
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Notes: The respondent has no previous NOV's, enforcement orders, or judgments within the past five years.

Culpability	No <	0% Enhancement	Subtotal 4	\$0
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Notes: Does not meet culpability criteria.

Good Faith Effort to Comply	0% Reduction	Subtotal 5	\$0
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	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with a small x)

Notes: The respondent is not yet in compliance.

Economic Benefit	0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$269	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$5,100	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$13,000
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OTHER FACTORS AS JUSTICE MAY REQUIRE		Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes:

Final Penalty Amount	\$13,000
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$13,000
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DEFERRAL	0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral due to findings order.

PAYABLE PENALTY	\$13,000
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Screening Date 02-Jul-2005

Docket No. 2005-0700-MLM-E

PCW

Respondent David Priess and Randy Priess

Policy Revision 2 (September 2002)

Case ID No. 25187

PCW Revision May 03, 2005

Reg. Ent. Reference No. RN104474374

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Thomas Greimel

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	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 The respondent has no previous NOVs, enforcement orders, or judgments within the past five years.

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

Screening Date 02-Jul-2005 **Docket No.** 2005-0700-MLM-E **PCW**
Respondent David Priess and Randy Priess *Policy Revision 2 (September 2002)*
Case ID No. 25187 *PCW Revision May 03, 2005*
Reg. Ent. Reference No. RN104474374
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Thomas Greimel
Violation Number 1
Primary Rule Cite(s) 30 Tex. Admin. Code §§ 335.2(a), 335.4 and 335.43(a)
Secondary Rule Cite(s)

Violation Description
 Failure to dispose of hazardous waste at an authorized facility resulting in an unauthorized discharge to soil, as documented during an investigation conducted on May 12, 2005. Specifically, hazardous waste was disposed at the respondent's property as a result of relocation and burial of previously contaminated soil. Toxicity Characteristic Leaching Procedure (TCLP) test results of soil samples from the newly excavated area had lead (EPA hazardous waste ID no. D008; regulatory level 5.0 mg/l) levels of 77.4 mg/l, 18.3 mg/l, and 6.5 mg/l.

Base Penalty \$10,000

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

		Harm			
Release		Major	Moderate	Minor	
OR	Actual	X			Percent 50%
	Potential				

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent

Matrix Notes
 Human health or the environment has been exposed to significant amounts of pollutants which exceed levels that are protective of human health or environmental receptors.

Adjustment -\$5,000

Base Penalty Subtotal \$5,000

Violation Events

Number of Violation Events 2

<i>mark only one use a small x</i>	daily	
	monthly	X
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$10,000

Two monthly penalty events are recommended from the May 12, 2005 investigation date to the July 2, 2005 screening date.

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

Estimated EB Amount \$263 **Violation Final Penalty Total** \$10,000

This violation Final Assessed Penalty (adjusted for limits) \$10,000

Economic Benefit Worksheet

Respondent David Priess and Randy Priess
 Case ID No: 25187
 Reg. Ent. Reference No. RN104474374
 Media [Statute] 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	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	\$5,000	12-May-2005	31-May-2006	1.1	\$263	n/a	\$263
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to assess and remediate contaminated soil from the investigation date to the anticipated date of compliance.

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 \$5,000

TOTAL \$263

Screening Date 02-Jul-2005 **Docket No.** 2005-0700-MLM-E **PCW**
Respondent David Priess and Randy Priess *Policy Revision 2 (September 2002)*
Case ID No. 25187 *PCW Revision May 03, 2005*
Reg. Ent. Reference No. RN104474374
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Thomas Greimel
Violation Number
Primary Rule Cite(s)
Secondary Rule Cite(s)
Violation Description
Base Penalty

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

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

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent <input type="text"/>
<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

<i>mark only one use a small x</i>	daily	<input type="text"/>
	monthly	<input checked="" type="text" value="x"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text"/>
	annual	<input type="text"/>
	single event	<input type="text"/>

Violation Base Penalty

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 David Priess and Randy Priess

Case ID No: 25187

Reg. Ent. Reference No. RN104474374

Media [Statute] Industrial and Hazardous Waste

Violation No. 2

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	\$100	12-Jan-2005	28-Feb-2006	1.1	\$6	n/a	\$6
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

Estimate cost to keep records regarding the management and disposal of hazardous waste from the investigation date to the anticipated date of compliance.

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

TOTAL

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF
AN ENFORCEMENT ACTION
AGAINST DAVID PRIESS AND
RANDY PRIESS;
RN104474374**

§
§
§
§
§
§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2005-0700-MLM-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. WATER CODE § 7.054, TEX. HEALTH & SAFETY CODE chs. 361 and 382 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order are David Priess and Randy Priess ("the Respondents").

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

FINDINGS OF FACT

1. The Respondents own and operate an unauthorized hazardous and industrial waste storage site located at 5876 RR 386, Fredonia, Mason County, Texas (the "Site").
2. The Site involves the management and/or the disposal of municipal and industrial hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an inspection conducted on January 12, 2005, a TCEQ San Angelo Regional Office investigator documented that the Respondents:
 - a. caused, suffered, or allowed outdoor burning in the State of Texas without authorization from the Commission. Specifically, charred remains including electrical wire insulation were observed in a pile of burned waste at the Site.

- b. failed to dispose of municipal hazardous waste at an authorized facility. Specifically, hazardous waste was disposed at the Site as a result of burning activities. Toxicity Characteristic Leaching Procedure ("TLCP") test results of soil samples from the burn piles had lead levels of 6.3 mg/L, 57.1 mg/L, 150 mg. L, and 59.6 mg/L that exceed the regulatory level of 5.0 mg/L.
 - c. failed to conduct hazardous waste determination on the burned wire insulation hazardous waste stream and failed to meet treatment standards for lead prior to land disposal.
4. During an inspection conducted on May 12, 2005, a TCEQ San Angelo Regional Office investigator documented that the Respondents:
 - a. failed to dispose of municipal hazardous waste at an authorized facility. Specifically, the Respondents relocated contaminated soil found during the January 12, 2006 investigation to different area at the Site. TCLP test results of soil samples of the relocated soil had lead levels of 77.4 mg/L, 18.3 mg/L, and 6.5 mg/L that exceed the regulatory limit of 5.0 mg/L.
 - b. failed to keep records of all hazardous waste activities regarding the quantities generated, stored, processed, and disposed. Specifically, no record regarding the generation and disposal of excavated hazardous waste was maintained at the Site.
5. The Respondents received notice of the violations on or about February 27, 2005 and June 20, 2005.
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 and Requiring Certain Actions of David Priess and Randy Priess" (the "EDPRP") in the TCEQ Chief Clerk's office on September 26, 2006.
7. By letter dated September 26, 2006, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served the Respondents 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 the Respondents received notice of the EDPRP.

8. More than 20 days have elapsed since the Respondents received notice of the EDPRP, provided by the Executive Director. The Respondents 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, the Respondents are subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE chs. 361 and 382 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., the Respondents caused, suffered, or allowed outdoor burning in the State of Texas without authorization from the Commission, in violation of 30 TEX. ADMIN. CODE §§ 111.201 and 111.219(7) and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Finding of Fact No. 3.b., the Respondents failed to dispose of municipal hazardous waste at an authorized facility, in violation of 30 TEX. ADMIN. CODE §§ 335.2(a) and 335.43(a).
4. As evidenced by Finding of Fact No. 3.c., the Respondents failed to conduct a hazardous waste determination on the burned wire insulation hazardous waste stream and failed to meet treatment standards for lead prior to land disposal, in violation of 30 TEX. ADMIN. CODE §§ 335.62 and 335.431(c) and 40 CFR §§ 262.11 and 268.40.
5. As evidenced by Finding of Fact No. 4.a., the Respondents failed to dispose of municipal hazardous waste at an authorized facility, in violation of 30 TEX. ADMIN. CODE §§ 335.2(a), 335.4, and 335.43(a).
6. As evidenced by Finding of Fact No. 4.b., the Respondents failed to keep records of all hazardous waste activities regarding the quantities generated, stored, processed, and disposed, in violation of 30 TEX. ADMIN. CODE § 335.9(a)(1).
7. As evidenced by Finding of Fact Nos. 6 and 7, the Executive Director has timely served the Respondents with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
8. As evidenced by Finding of Fact No. 8, the Respondents have failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the

Commission may enter a Default Order against the Respondents and assess the penalty recommended by the Executive Director.

9. Pursuant to TEX. WATER CODE § 7.056, the Commission has the authority to assess an administrative penalty against the Respondents for violations of the Texas Water Code and 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.
10. An administrative penalty in the amount of twenty-five thousand dollars (\$25,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
11. 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. The Respondents are assessed an administrative penalty in the amount of twenty-five thousand dollars (\$25,000.00) for violations of TEX. HEALTH & SAFETY CODE chs. 361 and 382 and rules of the TCEQ. The payment of this administrative penalty and the Respondents' 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: David Priess and Randy Priess; Docket No.2005-0700-MLM-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 Respondents shall undertake the following technical requirements:

- a. Immediately upon the effective date of this Order, the Respondents shall:
 - i. Allow employees of the Commission access to the Site to conduct inspections for the purpose of investigating conditions relating to rules and regulations of the Commission, in accordance with 30 TEX. WATER CODE § 26.014 and TEX. HEALTH & SAFETY CODE § 361.032; and
 - ii. Cease causing or allowing outdoor burning at the Site without first receiving authorization from the Commission, in accordance with 30 TEX. ADMIN. CODE § 111.201.
- b. Within 30 days after the effective date this Order, the Respondents shall:
 - i. Submit a report that includes a record regarding the generation and disposal of hazardous waste at the Site, in accordance with the requirements of 30 TEX. ADMIN. CODE § 335.9(a)(1); and
 - ii. Conduct a hazardous waste determination on the burned wire insulation stream and determine if that waste is restricted from land disposal, in accordance with 30 TEX. ADMIN. CODE §§ 335.62 and 335.431(c) and 40 CFR §§ 262.11 and 268.7(a)(1).
- c. Within 45 days after the effective date this Order, the Respondents shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.b.ii.;
- d. Within 90 days after the effective date of this Order, the Respondents shall submit an Affected Property Assessment Report, pursuant to 30 TEX. ADMIN. CODE § 350.91, to the Executive Director for approval. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program found in 30 TEX. ADMIN. CODE ch. 350 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(1)); and Institutional Control under Subchapter F;
- e. Written notification shall be provided to the TCEQ San Angelo Regional Office at least 5 working days prior to conducting any on-site investigation, remedial, or monitoring activities in conjunction with Ordering Provision No. 2.d. to allow San Angelo Regional personnel the opportunity to observe the activities and to split any soil, sediment, groundwater, or surface water samples which may be collected;

The notification shall be sent to:

Mr. Mark Newman, Waste Section Manager
Texas Commission on Environmental Quality
San Angelo Regional Office
622 S. Oaks, Suite K
San Angelo, Texas 76903-7035

- f. Within 105 days after the effective date of this Order, the Respondents shall submit written certification as described below, and include detailed supporting documentation including photographs, receipts and/or other records to demonstrate compliance with the Ordering Provision No. 2.d.
- g. The certifications required by Ordering Provision Nos. 2.c. and 2.f. shall be notarized by a State of Texas Notary Public and 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 certification shall be sent to:

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

and

Mr. Mark Newman, Waste Section Manager
Texas Commission on Environmental Quality
San Angelo Regional Office
622 S. Oaks, Suite K
San Angelo, Texas 76903-7035

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon the Respondents. The Respondents are 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 Respondents fail 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 Respondents' failure to comply is not a violation of this Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. 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 the Respondents if the Executive Director determines that the Respondents have not complied with one or more of the terms or conditions in this Order.
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.
9. 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.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF MARK A CURNUTT

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Mark A. Curnutt. 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 and Requiring Certain Actions of David Priess and Randy Priess” (the “EDPRP”) with the Office of the Chief Clerk on September 26, 2006.

I sent the EDPRP to the Respondents at their last known address on September 26, 2006 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrappers sent by certified mail as “unclaimed”. The first class mail has not been returned, indicating the respondents received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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



Mark A. Curnutt
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Mark A. Curnutt, 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 29 day of May, A.D., 2007.



Notary Signature

Notary Stamp

