

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2002-0714-MLM-E TCEQ ID NO.: RN104160635 CASE NO.: 17690
RESPONDENT NAME: MATT DIETZ DBA MATT DIETZ COMPANY

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 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 checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 25 miles south of Laredo on Highway 83, Zapata County

TYPE OF OPERATION: Ranch

SMALL BUSINESS: Yes No

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

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 March 31, 2008. No comments were received.

CONTACTS AND MAILING LIST:

- TCEQ Attorney: Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-2053
 Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
- TCEQ Enforcement Coordinator: Ms. Suzanne Walrath, Air Enforcement Section, MC 149, (512) 239-2134
- TCEQ Regional Contact: Ms. Rosa Luna-Pirtle, Laredo Regional Office, MC R-16, (956) 753-4052
- Respondent: Mr. Matt Dietz, Owner, Matt Dietz Company, P.O. Box 1702, Laredo, Texas 78041
- Respondent's Attorney: Not represented by counsel.

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>Dates of Complaints Relating to this Case: None</p> <p>Dates of Investigations: January 3, 2002</p> <p>Date of NOE relating to this Case: January 24, 2002</p> <p>Background Facts:</p> <p>This case was previously scheduled as a Default Order but was remanded on January 13, 2004 at the last minute when the Respondent requested an Agreed Order. The Respondent submitted incomplete documentation of finances for review of his ability to pay the penalty. Attempts to contact the Respondent have been unsuccessful.</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. Conducted unauthorized burning of plastic [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)].</p> <p>2. Failed to properly dispose of solid waste [30 TEX. ADMIN. CODE § 330.5(a)].</p>	<p>Total Assessed: \$9,375</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$9,375</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 this Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: August 29, 1999</p>	<p>Ordering Provisions</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 15 days, remove and dispose of the debris remaining in the burn area at the Site and transport the material to an authorized facility. 2. Within 30 days, provide receipts to demonstrate the proper disposal of the debris as described in Ordering Provision No. 1. 3. Within 90 days, submit an Affected Property Assessment Report to the Executive Director for approval. If response actions are necessary, comply with all applicable requirements of the Texas Risk Reduction Program which may include: plans, reports, notices, financial assurance, and Institutional Controls. 4. In the future, notify the TCEQ Laredo Regional Office in writing 10 working days prior to conducting any on-site investigative, remedial, closure, or monitoring activities to allow the TCEQ regional investigators the opportunity to observe the activities and to split any soil, sediment, groundwater, or surface water samples which may be collected.



Case Information

Screening Date	21-May-2002	Case Priority Due Date	18-Sep-2002
PCW Date	12-Feb-2008	EPA SNC/SV Due Date	
Respondent	Matt Dietz dba Matt Dietz Company		
ID Number(s)	Air Acct. No. ZA0177P, TNRCC Enf. ID No. 17690		
Docket Number	2002-0714-MLM-E	Facility/Site Region	16
Enf. Coordinator	Suzanne Walrath	EC's Unit or Region	Team 3
Type of Order	1660	No. of Violations in PCW	2
Case Priority	3	Enter x for Major Source (as defined in PP)	

Media-Program

x	Program Name(s)	Admin. Penalty Dollar Limit	
		Min	Max
x	Air and MSW	\$0	\$10,000
	Water Rights	\$0	\$5,000
		\$0	\$2,500
	Public Water Supply	\$50	\$1,000
	Levees	\$0	\$1,000
	Public Water Utilities	\$0	\$500

Adjustments to Subtotal 1

Total Base Penalty forward (subtotal 1) \$7,500

Culpability (enhancement)

Does the respondent meet any of the culpability criteria? Yes No

Notes A NOV for the same violation was issued on May 7, 2001.

Adjustment amount (subtotal 2) \$1,875

Economic Benefit (enhancement)

Total of EB Amounts \$1,672
 EB Enhancement (percent) 0%
 Adjustment amount (subtotal 5) \$0
 Approx. Cost of Compliance \$3,800

Good Faith Effort to Comply (reduction)

Timing of Action

Quality of Action Before NOV NOV to EDPRP or Order
 Extraordinary Percent
 Ordinary 0%
 None of the above (mark only one; use small x)

Notes The Respondent does not meet the good faith criteria.

Adjustment amount (subtotal 3) \$0

Compliance History (enhancement)

Enter Percent 0 (enter number only; e.g., 30 for 30%)

Notes There is no record of previous findings orders, judicial actions, or criminal convictions.

Adjustment amount (subtotal 4) \$0

Final Subtotal \$9,375

Other Factors as justice may require

Enter Adjustment Percentage (+/-) 0% (enter number only; e.g., -30 for -30%)

Amount \$0

Notes

(if more space is needed, increase row height)

Final Penalty Amount \$9,375

Final Assessed Penalty (including any statutory limit adj.) \$9,375

Payable Penalty

Enter Deferral Percentage 0% (enter number only; e.g., 20 for 20%)

Deferral \$0

Notes A deferral is not recommended due to a NOV for the same violation that was issued on May 7, 2001.

Payable Penalty \$9,375

Screening Date 21-May-02 Docket Number 2002-0714-MLM-E

PCW

Respondent Matt Dietz dba Matt Dietz Company

Plcy. rev. 1 (01/99)

ID Number(s) Air Acct. No. ZA0177P, TNRCC Enf. ID No. 17690

PCW rev. 12/06/2001

Media [Statute] Air and MSW

Enf. Coordinator Suzanne Walrath

Violation Number 1

Primary Rule Cite 30 Tex. Admin. Code § 111.201

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

Violation Description Respondent was conducting unauthorized outdoor burning of plastics used as irrigation aids for agriculture production. Approximately one and one half acre of ranch land piled three feet high with plastic was unattended and burning on 12/27/01 when the Zapata county deputy and fire chief discovered the site.

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix

Harm

Release	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

» Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Outdoor burning events have resulted in the release of air contaminants. Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 1

mark only one; use small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$2,500

Events Notes

One single event is recommended based on the burn date of 12/27/01 as documented during the 1/3/02 inspection.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$1,672

Violation Final Penalty total \$3,125

This Violation Final Assessed Penalty (adjusted for limits) \$3,125

Economic Benefit Worksheet

Respondent Matt Dietz dba Matt Dietz Company
ID Number(s) Air Acct. No. ZA0177P, TNRC Enf. ID No. 17690
Media [Statute] Air and MSW
Violation Number 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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Delayed Costs

Equipment	\$3,000	3-Jan-2002	9-Sep-2008	6.7	\$67	\$1,338	\$1,404
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	\$800	3-Jan-2002	9-Sep-2008	6.7	\$268	n/a	\$268
Permit Costs				0.0	\$0	n/a	\$0
Other (As Needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

This amount represents the estimated cost of a used bailer to bail approximately 100 cubic yards of the plastic material on site. The estimated cost for removal and disposal is \$8 per cubic yard. These costs are calculated from the inspection date until the projected 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/equip				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 21-May-02 Docket Number 2002-0714-MLM-E

PCW

Respondent Matt Dietz dba Matt Dietz Company

Plcy. rev. 1 (01/99)

ID Number(s) Air Acct. No. ZA0177P, TNRCC Enf. ID No. 17690

PCW rev. 12/06/2001

Media [Statute] Air and MSW

Enf. Coordinator Suzanne Walrath

Violation Number

2

Primary Rule Cite

30 Tex. Admin. Code § 330.5(a)

Secondary Cite(s)

Violation Description

Failed to dispose of solid waste properly. Plastic sheets and irrigation tubing from onion fields were partially burned and left laying in piles in the field.

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix

Harm

Release	Major	Moderate	Minor
Actual		x	
Potential			

Percent 25%

» Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes Human health or the environment has been exposed to significant amounts of pollutants which did not exceed levels that are protective of human health.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

Violation Events

Number of Violation Events 2

mark only one; use small x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty \$5,000

Events Notes Two quarterly events are recommended based on the investigation conducted on 1/3/02 until the case screening date on 5/6/02.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$0

Violation Final Penalty total \$6,250

This Violation Final Assessed Penalty (adjusted for limits) \$6,250

Economic Benefit Worksheet

Respondent Matt Dietz dba Matt Dietz Company
 ID Number(s) Air Acct. No. ZA0177P, TNRCC Enf. ID No. 17690
 Media [Statute] Air and MSW
 Violation Number 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost <small>No commas or \$</small>	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
 Economic benefit considered in Violation No. 1

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/equip				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: CN601052715 Matt Dietz Co., Ltd. Classification: AVERAGE Rating: 0.50
Regulated Entity: RN104160635 MATT DIETZ Classification: AVERAGE Site Rating: 3.00

ID Number(s):

Location: 25 MILES S OF LAREDO HWY 83 S, SAN YGNACIO, TX,
78046

TCEQ Region: REGION 16 - LAREDO

Date Compliance History Prepared: February 12, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: May 21, 1997 to May 21, 2002

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

Name: Suzanne Walrath Phone: 512/239-2134

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.)

1. 5/4/01 (19761214)

- E. Written notices of violations (NOV).

Date: 5/7/01

Self: NO

Classification: Moderate

Citation: 30 TAC, Chapter 111, SubChapter B, 111.201

Description: Unauthorized outdoor burning

- 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
MATT DIETZ DBA MATT DIETZ
COMPANY,
RN104160635

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2002-0714-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 ch. 7, 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 is Matt Dietz dba Matt Dietz Company ("Mr. Dietz").

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

FINDINGS OF FACT

1. Mr. Dietz owns and operates a ranch 25 miles south of Laredo on Highway 83, Zapata County, Texas (the "Site").
2. The Site consists of one or more sources defined in TEX. HEALTH & SAFETY CODE ch. 382. The Site also involves or involved the management of solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an inspection on January 3, 2002, a TCEQ Laredo Regional Office investigator documented that Mr. Dietz:
 - a. Conducted the unauthorized burning of plastic; and
 - b. Failed to properly dispose of solid waste.
4. Mr. Dietz received notice of the violations on or about March 29, 2002.

5. 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 Matt Dietz dba Matt Dietz Company" (the "EDPRP") in the TCEQ Chief Clerk's office on March 3, 2003.
6. By letter dated March 3, 2003, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Dietz with notice of the EDPRP. According to the return receipt "green card", Mr. Dietz received notice of the EDPRP on March 24, 2003, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Dietz received notice of the EDPRP, provided by the Executive Director. Mr. Dietz 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. Dietz is subject to the jurisdiction of the TCEQ pursuant to Tex. Water Code ch. 7, Tex. Health & Safety Code chs. 361 and 382 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Dietz conducted unauthorized burning of plastic, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b).
3. As evidenced by Finding of Fact No. 3.b., Mr. Dietz failed to properly dispose of solid waste, in violation of 30 TEX. ADMIN. CODE § 330.5(a).
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Mr. Dietz with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
6. As evidenced by Finding of Fact No. 7, Mr. Dietz has 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 Mr. Dietz and assess the penalty recommended by the Executive Director.

7. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Dietz 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.
8. An administrative penalty in the amount of nine thousand three hundred seventy-five dollars (\$9,375.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
9. 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. Dietz is assessed an administrative penalty in the amount of nine thousand three hundred seventy-five dollars (\$9,375.00) for violations of TEX. HEALTH & SAFETY CODE chs. 361 and 382 and rules of the TCEQ. The payment of this administrative penalty and Mr. Dietz'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: Matt Dietz dba Matt Dietz Company; Docket No. 2002-0714-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. Mr. Dietz shall undertake the following technical requirements:
 - a. Within 15 days upon the effective date of this Order, Mr. Dietz shall remove and dispose of the debris remaining in the burn area at the Site and transport the material to an authorized facility;

- b. Within 30 days after the effective date of this Order, Mr. Dietz shall provide receipts to demonstrate the proper disposal of the debris as described in Ordering Provision 2.a.;
- c. Notify the TCEQ Laredo Regional Office in writing 10 working days prior to conducting any on-site investigative, remedial, closure, or monitoring activities to allow the TCEQ regional investigators the opportunity to observe the activities and to split any soil, sediment, groundwater, or surface water samples which may be collected;
- d. Within 90 days upon the effective date of this Order, Mr. Dietz 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 Controls under Subchapter F; and
- e. Mr. Dietz shall submit all correspondence, reports, and documentation required by these Ordering Provisions to:

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

and

Rose Luna-Pirtle, Air Section Manager
Texas Commission on Environmental Quality
Laredo Regional Office
1403 Seymour, Suite 2
Laredo, Texas 78040-8752

- 3. All relief not expressly granted in this Order is denied.
- 4. The provisions of this Order shall apply to and be binding upon Mr. Dietz. Mr. Dietz is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.

5. If Mr. Dietz fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Mr. Dietz 's failure to comply is not a violation of this Order. Mr. Dietz shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Dietz shall notify the Executive Director within seven days after Mr. Dietz becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Mr. Dietz shall be made in writing to the Executive Director. Extensions are not effective until Mr. Dietz receives 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 Mr. Dietz if the Executive Director determines that Mr. Dietz has 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 JIM SALLANS

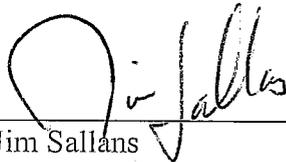
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §.

“My name is Jim Sallans. 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, 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 Matt Dietz dba Matt Dietz Company” (the “EDPRP”) was filed with the Office of the Chief Clerk on March 3, 2003.

The EDPRP was sent to Mr. Dietz at his last known address on March 3, 2003 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Mr. Dietz received notice of the EDPRP on March 24, 2003, as evidenced by the signature on the card.

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



Jim Sallans
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jim Sallans, 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 25th day of July, A.D., 2008.

Notary Stamp

