

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2004-0443-IHW-E TCEQ ID NO.: RN103780896 CASE NO.: 14132
RESPONDENT NAME: MARK MCKILLIP

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 type="checkbox"/> AIR	<input 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

SITE WHERE VIOLATION(S) OCCURRED: approximately 620 feet NE of State Highway 16 on County Road 450, DeLeon, Comanche County

TYPE OF OPERATION: 2.3 acres with an abandoned residence and some outbuildings

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: There are no complaints. There is no record of additional pending enforcement actions regarding this 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 November 26, 2007. 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: Mr. Clinton Sims, Waste Enforcement Section, MC 128, (512) 239-6933
- TCEQ Regional Contact: Mr. Mike Taylor, Abilene Regional Office, MC R-3, (325) 698-6125
- Respondent: Mr. Mark McKillip, 814 Lost Forest Drive, Arlington, Texas 76011-5884
- Respondent's Attorney: Not represented by counsel on this enforcement matter.

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 Relating to this Case: July 29, 2003</p> <p>Dates of NOV/NOEs Relating to this Case: October 14, 2003 (NOE)</p> <p>Background Facts:</p> <p>The Respondent owned the abandoned residence on which chemicals were leaking from a storage shed. The chemicals were used in the Respondent's agri-business activities. The Respondent was not present at the time of the investigation and he could not be located for service. Ultimately, a valid address was obtained. On July 11, 2007, the Respondent was served and he has failed to respond to the petition and attempts to contact him.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>IHW:</p> <p>1. Failed to notify the TCEQ within 24 hours of a reportable discharge [30 TEX. ADMIN. CODE § 327.3(b)].</p> <p>2. Failed to take action to abate and contain the spill or discharge [30 TEX. ADMIN. CODE § 327.5(a) and TEX. WATER CODE § 26.121(a)(3)].</p>	<p>Total Assessed: \$3,500</p> <p>Total Deferred: \$0</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$3,500</p> <p>This is a Default Order. The Respondent has not actually 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: September 2002</p>	<p>Ordering Provisions</p> <p>On July 29, 2003, the materials were removed from the Site by an Emergency Response Contractor.</p>



Penalty Calculation Worksheet (PCW)

DATES

PCW	15-Mar-2004	Screening	31-Mar-2004	Priority Due	29-Jul-2004	EPA Due	
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RESPONDENT INFORMATION

Respondent	Mark McKillip; CN602300691		
Respondent/Site ID No(s)	Mark McKillip Property; RN103780896		
Facility/Site Region	3 - Abilene	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No(s)	CCEDS Case No. 14132		No. Violations	2
Docket No.	2004-0443-IHW-E		Order Type	Findings
Case Priority	3	Enf. Coordinator	Michael Limos	
		EC's Team	Enforcement Team 6	
Media Program(s)	Industrial and Hazardous Waste			
Admin. Penalty \$ Limit	Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) Subtotal 1

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

Notes +

Culpability 0% Enhancement Subtotal 4

No Select Yes/No +
Notes

Good Faith Effort to Comply 0% Reduction Subtotal 5

	Before NOV	NOV to EDRP/Settlement Offer	
Extraordinary			
Ordinary			
None of the above	X	(mark with small x)	+

Notes

Economic Benefit 0% Enhancement* Subtotal 6

\$2,330	Total EB Amounts	*Capped at the Total EB \$ Amount	
\$2,330	Approx. Cost of Compliance		=

SUM OF SUBTOTALS 1-7 Final Subtotal

OTHER FACTORS AS JUSTICE MAY REQUIRE Adjustment

Reduces or enhances the Final Subtotal by the indicated percentage. (enter number only; e.g. -30 for -30%)
Notes =
Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT Final Assessed Penalty

DEFERRAL Deferral Reduction Adjustment

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

PAYABLE PENALTY

Screening Date 31-Mar-2004

Docket Number 2004-0443-IHW-E

PCW

Respondent Mark McKillip; CN602300691

Policy Revision 2 (09/02)

Case ID No. CEEDS Case No. 14132

PCW Revision 3/13/2003

Respondent/Site ID No. Mark McKillip Property; RN103780896

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Limos

Site Address 620 ft. NE of SH 16 on CR 450, De Leon, Comanche County

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOV's with same or similar violations as those in the current enforcement action (number of NOV's meeting criteria)		0%
	Other written NOV's		0%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)		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%
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%
	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%
Convictions	Any criminal convictions of this state or the federal government (number of counts)		0%
Emissions	Chronic excessive emissions events (number of events)		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 submitted)		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%
<i>Please enter Yes or No</i>			
Other	Environmental management systems in place for one year or more		0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program		0%
	Participation in a voluntary pollution reduction program		0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements		0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No Select Yes/No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer Select High, Average or Poor

Adjustment Percentage (Subtotal 7) 0%

Compliance History Summary

Compliance History Notes The Respondent has not received any NOV's at this site within the past 5 years.

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

Screening Date 31-Mar-04

Docket Number 2004-0443-IHW-E

PCW

Respondent Mark McKillip; CN602300691

Policy Revision 2 (09/02)

Case ID No. CCÉDS Case No. 14132

PCW Revision 3/13/2003

Respondent/Site ID No. Mark McKillip Property; RN103780896

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Limos

Violation Number 1

Primary Rule Cite 30 Tex. Admin. Code § 327.3(b)

Secondary Cite(s)

Violation Description Failure to notify the TCEQ within 24 hours of a reportable discharge.

Base Penalty \$10,000

» Environmental, Property and Human Health Matrix.

Harm

OR	Release	Major	Moderate	Minor	Percent
	Actual				
Potential					

» Programmatic Matrix

OR	Falsification	Major	Moderate	Minor	Percent
			x		

Matrix Notes 100% of the requirement was not met.

Adjustment -\$9,000

Base Penalty Subtotal \$1,000

Violation Events

Number of Violation Events 1

mark only one; use small x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,000

Events Notes One single event is recommended based on the investigation conducted on 7/29/03.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$80

Violation Final Penalty total \$1,000

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

Economic Benefit Worksheet

Respondent Mark McKillip; CN602300691
ID Number(s) CCEDS Case No. 14132
Media [Statute] Industrial and Hazardous Waste
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
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/equip				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$80	29-Jul-2003	29-Jul-2003	0.0	\$0	\$80	\$80
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

The estimated cost of paying an employee \$10/hr. for 8 hours; during which notification of a reportable discharge/spill could have been made to the TCEQ.

Approx Cost of Compliance \$80

TOTAL \$80

Screening Date 31-Mar-04

Docket Number 2004-0443-IHW-E

PCW

Respondent Mark McKillip; CN602300691

Policy Revision 2 (09/02)

Case ID No. CCEDS Case No. 14132

PCW Revision 3/13/2003

Respondent/Site ID No. Mark McKillip Property; RN103780896

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Michael Limos

Violation Number 2

Primary Rule Cite 30 Tex. Admin. Code § 327.5(a)

Secondary Cite(s) Tex. Water Code § 26.121(a)(3)

Violation Description The Respondent took no action to abate and contain the spill or discharge. A state-led response team was required to handle the discharge.

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 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 investigation conducted on 7/29/03.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount (\$) \$2,250

Violation Final Penalty total \$2,500

This Violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent Mark McKillip; CN602300691
ID Number(s) CCEDS Case No. 14132
Media [Statute] Industrial and Hazardous Waste
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
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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/equip				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]	\$2,250	29-Jul-2003	29-Jul-2003	0.0	\$0	\$2,250	\$2,250
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost of professional removal and transportation of assorted leaking pesticides from the Site.

Approx Cost of Compliance \$2,250

TOTAL \$2,250

Compliance History

Customer/Respondent/Owner-Operator:	CN602300691 MCKILLIP, MARK	Classification: AVERAGE BY DEFAULT	Rating: 3.010
Regulated Entity:	RN103780896 MARK MCKILLIP PROPERTY	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):			
Location:	Located approximately 620 feet NE of State Hwy 16 on CR 450 in De Leon, TX		Rating Date: 9/1/03 Repeat Violator: NO
TCEQ Region:	REGION 03 - ABILENE		
Date Compliance History Prepared:	March 31, 2004		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 31, 1999 to March 31, 2004		

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

Name: Mike Limos Phone: 512-239-5839

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 dates of investigations.
1 10/13/2003
 - E. Written notices of violations (NOV).
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
N/A
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MARK MCKILLIP,
RN103780896

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2004-0443-IHW-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 chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 361, 30 TEX. ADMIN. CODE chs. 70 and 327, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is Mark McKillip ("Mr. McKillip").

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

FINDINGS OF FACT

1. Mr. McKillip owned approximately 2.3 acres with an abandoned residence and some outbuildings located approximately 620 feet NE of State Highway 16 on County Road 450, DeLeon, Comanche County, Texas (the "Site").
2. The Facility involves the management and disposal of industrial solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an inspection on July 29, 2003, a TCEQ Abilene Regional Office investigator documented that Mr. McKillip:
 - a. Failed to notify the TCEQ within 24 hours of a reportable discharge; and
 - b. Failed to take action to abate and contain the spill or discharge documented during the investigation.
4. Mr. McKillip received notice of the violations on or about October 14, 2003.

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 Mark McKillip" (the "EDPRP") in the TCEQ Chief Clerk's office on July 10, 2007.
6. By letter dated July 10, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. McKillip with notice of the EDPRP. According to the return receipt "green card", Mr. McKillip received notice of the EDPRP on July 11, 2007, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. McKillip received notice of the EDPRP, provided by the Executive Director. Mr. McKillip 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. McKillip is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 361, 30 TEX. ADMIN. CODE chs. 70 and 327 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. McKillip failed to notify the TCEQ within 24 hours of a reportable discharge, in violation of 30 TEX. ADMIN. CODE § 327.3(b).
3. As evidenced by Finding of Fact No. 3.b., Mr. McKillip failed to take action to abate and contain the spill or discharge documented during the investigation, in violation of 30 TEX. ADMIN. CODE § 327.5(a) and TEX. WATER CODE § 26.121(a)(3).
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Mr. McKillip with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
5. As evidenced by Finding of Fact No. 7, Mr. McKillip 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. McKillip and assess the penalty recommended by the Executive Director.

6. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. McKillip 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.
7. An administrative penalty in the amount of three thousand five hundred dollars (\$3,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. 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. McKillip is assessed an administrative penalty in the amount of three thousand five hundred dollars (\$3,500.00) for violations of TEX. WATER CODE ch. 26, TEX. HEALTH & SAFETY CODE ch. 361, and rules of the TCEQ. The payment of this administrative penalty and Mr. McKillip'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: Mark McKillip; Docket No. 2004-0443-IHW-E" to:

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

2. All relief not expressly granted in this Order is denied.
3. The provisions of this Order shall apply to and be binding upon Mr. McKillip.

4. If Mr. McKillip 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. McKillip's failure to comply is not a violation of this Order. Mr. McKillip shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. McKillip shall notify the Executive Director within seven days after Mr. McKillip becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. 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. McKillip shall be made in writing to the Executive Director. Extensions are not effective until Mr. McKillip receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. 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. McKillip if the Executive Director determines that Mr. McKillip has not complied with one or more of the terms or conditions in this Order.
7. 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.
8. 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.

Mark McKillip
DOCKET NO. 2004-0443-IHW-E
Page 5

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JIM SALLANS

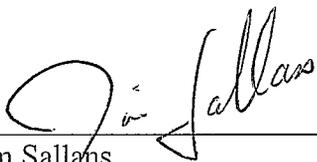
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“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, 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 Mark McKillip” (the “EDPRP”) with the Office of the Chief Clerk on July 10, 2007.

I sent the EDPRP to Mr. McKillip at his last known address on July 10, 2007 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card”, Mr. McKillip received notice of the EDPRP on July 11, 2007, as evidenced by the signature on the card.

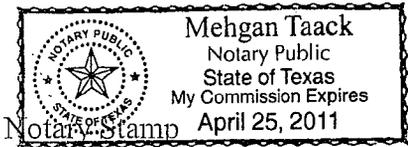
More than 20 days have elapsed since Mr. McKillip received notice of the EDPRP. Mr. McKillip failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference”.

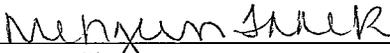


Jim Sallans
Attorney
Texas Commission on Environmental Quality

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 15th day of August, A.D., 2007.





Notary Signature