

EXECUTIVE SUMMARY - ENFORCEMENT MATTER Page 1 of 2
 DOCKET NO.: 2006-1945-MSW-E TCEQ ID: RN104381843 CASE NO.: 31442
 RESPONDENT NAME: MICHAEL DANIEL DBA MIKES TIRE

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 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: 11808 County Road, Jewett, Leon County

TYPE OF OPERATION: Municipal solid waste facility

SMALL BUSINESS: Yes No

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

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

COMMENTS RECEIVED: The *Texas Register* comment period expired on December 10, 2007. No comments were received.

CONTACTS AND MAILING LIST:

- TCEQ Attorney: Mr. Barham A. Richard, Litigation Division, MC 175, (512) 239-0107
- Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873
- TCEQ Enforcement Coordinator: Ms. Dana Shuler, Waste Enforcement Section, MC 128 (512) 239-2505
- TCEQ Regional Contact: Mr. Frank Bureson, Waco Regional Office, MC R-9, (254) 761-3007
- 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>Date of Complaints Relating to this Case: None</p> <p>Dates of Investigation Relating to this Case: August 3, 2004 and April 6, 2006 through April 20, 2006</p> <p>Date of NOE Relating to this Case: July 20, 2006</p> <p>Background Facts:</p> <p>The Executive Director filed an EDPRP on July 12, 2007. The Respondent received notice of the EDPRP, as evidenced by the signature on the "green card," on July 19, 2007. The Executive Director filed an EDFARP on August 23, 2007. The Respondent received notice of the EDFARP, as evidenced by the signature on the "green card," on August 27, 2007. The Respondent has 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>MSW:</p> <p>Failed to prevent the unauthorized disposal of municipal solid waste and unauthorized storage of more than 500 scrap tires on the ground at the Facility [30 TEX. ADMIN. CODE §§ 330.15(c) and 328.60(a) and TEX. HEALTH & SAFETY CODE § 361.112(a)].</p>	<p>Total Assessed: \$5,250</p> <p>Total Deferred: \$0</p> <p>Total Due to General Revenue: \$5,250</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 proposed 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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provision(s)</p> <ol style="list-style-type: none"> 1. Immediately, the Respondent shall cease accepting any additional waste. 2. Within 30 days, properly dispose of all municipal solid waste, including all scrap and/or used tires at an authorized facility.



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES Assigned PCW Screening EPA Due

RESPONDENT/FACILITY INFORMATION

Respondent
 Reg. Ent. Ref. No.
 Facility/Site Region Major/Minor Source

CASE INFORMATION

Enf./Case ID No. No. of Violations
 Docket No. Order Type
 Media Program(s) Enf. Coordinator
 Multi-Media EC's Team
 Admin. Penalty \$ Limit Minimum Maximum

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 Subtotals 2, 3, & 7

Notes

Culpability Subtotal 4

Notes

Good Faith Effort to Comply Subtotal 5

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	<i>(mark with a small x)</i>

Notes

Economic Benefit Subtotal 6

Total EB Amounts	<input type="text" value="\$53"/>	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	<input type="text" value="\$940"/>	

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 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 05-Oct-2006

Docket No. 2006-1945-MSW-E

PCW

Respondent Michael Daniel dba Mikes Tire

Policy Revision 2 (September 2002)

Case ID No. 31442

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN104381843

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Limos

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)	1	5%
	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%
Other	<i>Please Enter Yes or No</i>		
	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) 5%

>> 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 received one NOV for same or similar violations at this site within the past five years.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date 05-Oct-2006

Docket No. 2006-1945-MSW-E

PCW

Respondent Michael Daniel dba Mikes Tire

Policy Revision 2 (September 2002)

Case ID No. 31442

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN104381843

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Limos

Violation Number

Primary Rule Cite(s)

Secondary Rule Cite(s)

Violation Description

Base Penalty

>> Environmental, Property and Human Health Matrix

Harm

Release	Major	Moderate	Minor
Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="checkbox"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>

Percent

OR

>> Programmatic Matrix

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

Percent

Matrix Notes

Adjustment

Base Penalty Subtotal

Violation Events

Number of Violation Events

mark only one use a small x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input checked="" type="checkbox"/>
	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 Michael Daniel dba Mikes Tire
 Case ID No. 31442
 Reg. Ent. Reference No. RN104381843
 Media [Statute] Municipal Solid 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	\$940	06-Apr-2006	22-May-2007	1.1	\$53	n/a	\$53
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to dispose of approximately 500 scrap tires and 20 cubic yards of municipal solid waste at authorized facilities from the investigation date to the projected date of compliance. Tire disposal estimates were calculated using disposal costs of \$80 per ton multiplied by the approximate weight of 500 tires at 8.5 tons. Municipal solid waste disposal costs were calculated using a disposal cost of \$13 per cubic yard.

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: CN602694739 Michael Daniel Classification: AVERAGE Rating: 2.00
Regulated Entity: RN104381843 MIKES TIRE Classification: AVERAGE Site Rating: 2.00

ID Number(s): MUNICIPAL SOLID WASTE NON ID NUMBER WA0014
PERMITTED
Location: 11808 COUNTY ROAD 317, JEWETT, TX, 75846 Rating Date: 9/1/2006 Repeal Violator: NO
TCEQ Region: REGION 09 - WACO
Date Compliance History Prepared: November 06, 2006
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: November 06, 2001 to November 06, 2006

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

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

N/A

2. Chronic excessive emissions events.

N/A

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

1 02/27/2006 (457133)

2 08/31/2006 (459091)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 09/08/2004 (292334)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 328, SubChapter F 328.60(a)

Description: Failure to obtain a scrap tire storage site registration prior to storing more than 500 used an/or scrap tires on the ground.

Self Report? NO

Classification: Moderate

Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)

30 TAC Chapter 330, SubChapter A 330.5[G]

Description: Failure to dispose of used and/or scrap tires and municipal solid wastes at an approved facility.

Environmental audits.

N/A

1. Type of environmental management systems (EMSs).

N/A

Voluntary on-site compliance assessment dates.

N/A

Participation in a voluntary pollution reduction program.

N/A

Early compliance.

N/A

ites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
MICHAEL DANIEL DBA MIKES
TIRE;
RN104381843

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

§
§
§
§
§
§

DEFAULT ORDER
DOCKET NO. 2006-1945-MSW-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's First Amended Report and Petition filed pursuant to TEXAS WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 361, and 30 TEX. ADMIN. CODE chs. 70, 328, and 381, 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 Michael Daniel ("Mr. Daniel").

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

FINDINGS OF FACT

1. Mr. Daniel owns and operates a municipal solid waste facility located at 11808 County Road, Jewett, Leon County, Texas (the "Facility").
2. The Facility involves the management and/or disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During investigations conducted between April 6, 2006 - April 20, 2006, a TCEQ Waco Regional Office investigator documented that Mr. Daniel failed to prevent the unauthorized disposal of municipal solid waste and unauthorized storage of more than 500 scrap tires on the ground at the Facility. Specifically, the respondent disposed of approximately 20 cubic yards of municipal solid waste; including household rubbish, without authorization and was storing more than 500 scrap tires at the Facility.
4. Mr. Daniel received notice of the violation on or about July 20, 2006.
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 Michael Daniel” (the “EDPRP”) in the TCEQ Chief Clerk’s office on July 12, 2007.

6. By letter dated July 12, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Daniel with notice of the EDPRP. According to the return receipt “green card,” Mr. Daniel received notice of the EDPRP on July 19, 2007, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Daniel received notice of the EDPRP, provided by the Executive Director. Mr. Daniel failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
8. The Executive Director filed the “Executive Director’s First Amended 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 Michael Daniel” (the “EDFARP”) in the TCEQ Chief Clerk’s office on August 23, 2007.
9. By letter dated August 23, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Daniel with notice of the EDFARP. According to the return receipt “green card,” Mr. Daniel received notice of the EDFARP on August 27, 2007, as evidenced by the signature on the card.
10. More than 20 days have elapsed since Mr. Daniel received notice of the EDFARP, provided by the Executive Director. Mr. Daniel failed to file an answer to the EDFARP, 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. Daniel is subject to the jurisdiction of the TCEQ pursuant to TEXAS WATER CODE chs. 7 and 26, TEX. HEALTH & SAFETY CODE ch. 361, and 30 TEX. ADMIN. CODE chs. 70, 328, and 381 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Daniel failed to prevent the unauthorized disposal of municipal solid waste and unauthorized storage of more than 500 scrap tires on the ground at the Facility, as documented during an investigation conducted on April, 6, 2006. Specifically, the respondent disposed of approximately 20 cubic yards of municipal solid waste, including household rubbish, without authorization and was storing more than 500 scrap tires at the Facility, in violation of 30 TEX. ADMIN. CODE §§ 330.15(c) and 328.60(a), and TEX. HEALTH & SAFETY CODE § 361.112(a).

3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Daniel with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Mr. Daniel 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. Daniel and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Daniel for violations of the Texas Water Code and the Tex. Health & Safety Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of five thousand two hundred fifty dollars (\$5,250.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Daniel is assessed an administrative penalty in the amount of five thousand two hundred fifty dollars (\$5,250.00) for violations of the Texas Water Code, Texas Health & Safety Code, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Daniel'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: Michael Daniel; Docket No. 2006-1945-MSW-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. Daniel shall undertake the following technical requirements:
 - a. Immediately upon the effective date of the Commission Order, Mr. Daniel shall, cease accepting any additional waste at the Facility;
 - b. Within 30 days after the effective date of the Commissions Order, properly dispose of all municipal solid waste, including all scrap and/or used tires at an authorized facility; and
 - c. Within 45 days after the effective date of the Commission Order, Mr. Daniel shall submit written certification and detailed supporting documentation, including photographs, receipts, and /or other records, to demonstrate compliance with ordering provision No. 2.a and 2.b. The certification 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.”

Mr. Daniel shall submit the written certification and copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

with a copy to:

Frank Burlison, Waste Section Manager
Texas Commission on Environmental Quality
Waco Regional Office
6801 Sanger Avenue, Suite 2500
Waco, TX 76710

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. Daniel. Mr. Daniel is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. Daniel 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. Daniel's failure to comply is not a violation of this Order. Mr. Daniel shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Daniel shall notify the Executive Director within seven days after Mr. Daniel 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. Daniel shall be made in writing to the Executive Director. Extensions are not effective until Mr. Daniel 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. Daniel if the Executive Director determines that Mr. Daniel 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.

Michael Daniel
Docket No. 2006-1945-MSW-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF BARHAM A. RICHARD

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Barham A. Richard. 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 Michael Daniel" (the "EDPRP") was filed with the Office of the Chief Clerk on July 12, 2007.

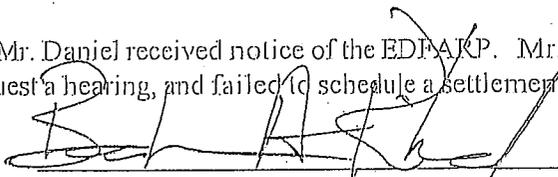
The EDPRP was mailed to Mr. Daniel at his last known address on July 12, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Mr. Daniel received notice of the EDPRP on July 19, 2007, as evidenced by the signature on the card.

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's First Amended 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 Michael Daniel" (the "EDFARP") was filed with the Office of the Chief Clerk on August 23, 2007.

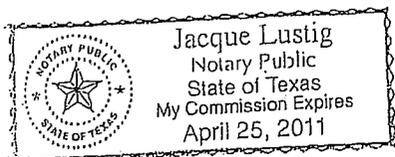
The EDFARP was mailed to Mr. Daniel at his last known address on August 23, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Mr. Daniel received notice of the EDFARP on August 27, 2007, as evidenced by the signature on the card.

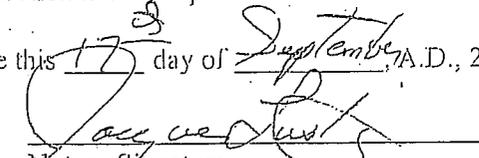
More than 20 days have elapsed since Mr. Daniel received notice of the EDFARP. Mr. Daniel failed to file an answer to the EDFARP, failed to request a hearing, and failed to schedule a settlement conference."


Barham A. Richard, Attorney
Office of Legal Services, Litigation Division

Before me, the undersigned authority, on this day personally appeared Barham A. Richard, 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 17th day of September, A.D., 2007.




Notary Signature

