

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2006-2040-LII-E TCEQ ID: RN103608964 CASE NO.: 31840**  
**RESPONDENT NAME: BRENDAN L. WACHTENDORF**

<b>ORDER TYPE:</b>		
<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	
<b>CASE TYPE:</b>		
<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 checked="" 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><b>SITE WHERE VIOLATION(S) OCCURRED:</b> 15011 Badger Ranch Boulevard, Woodway, McLennan County</p> <p><b>TYPE OF OPERATION:</b> Landscape irrigation</p> <p><b>SMALL BUSINESS:</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There is one complaint. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> One complaint has been received, but the complainant has not expressed a desire to protest this action or speak at agenda. No one other than the ED and the Respondent has expressed an interest in this manner.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on January 4, 2008. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b></p> <p style="padding-left: 20px;"><b>TCEQ Attorney:</b> Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019  Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873</p> <p style="padding-left: 20px;"><b>TCEQ Enforcement Coordinator:</b> Mr. Harvey Wilson, Air Enforcement Section, MC 219, (512) 239- 0321</p> <p style="padding-left: 20px;"><b>TCEQ Regional Contact:</b> Mr. Frank Bureson, Waco Regional Office, MC R-9, (254) 772-9241</p> <p style="padding-left: 20px;"><b>Respondent:</b> Mr. Brendan L. Wachtendorf, 9104 Regal Drive, Waco, Texas 76712-8661</p> <p style="padding-left: 20px;"><b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter.</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b>                      June 28, 2006</p> <p><b>Dates of Investigation Relating to this Case:</b>                      November 8, 2006</p> <p><b>Date of NOE Relating to this Case:</b>                      November 22, 2006</p> <p><b>Background Facts:</b>                      The EDPRP was filed September 17, 2007, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. 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 Respondent received notice of the EDPRP. The Respondent has failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p><b>LII:</b></p> <p>Failed to hold a valid irrigator license when selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system, and represented to the public that he performed said services, for which a license required [30 TEX. ADMIN. CODE §§ 30.5(a) and 344.4(a), TEX. WATER CODE § 37.003, and TEX. OCC. CODE § 1903.251].</p>	<p><b>Total Assessed:</b> \$250</p> <p><b>Total Deferred:</b> \$0</p> <p><b>Total Due to General Revenue:</b> \$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 Order.</p> <p><b>Site Compliance History Classification:</b> N/A</p> <p><b>Person Compliance History Classification:</b> N/A</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provision(s):</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Immediately, cease selling, designing, installing, maintaining, altering, repairing, or servicing irrigation systems, and shall cease representing to the public that he can perform said services, until properly licensed by the TCEQ.</li> <li>2. Within 15 days, submit written certification to demonstrate compliance.</li> </ol>



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision November 17, 2006

**TCEQ**

DATES	Assigned	27-Nov-2006	Screening	1-Dec-2006	EPA Due	
	PCW	21-Mar-2007				

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Brendan L. Wachtendorf
Reg. Ent. Ref. No.	RN103608964
Facility/Site Region	9-Waco
Major/Minor Source	Minor

<b>CASE INFORMATION</b>			
Enf./Case ID No.	31840	No. of Violations	1
Docket No.	2006-2040-LII-E	Order Type	1660
Media Program(s)	Irrigators	Enf. Coordinator	Harvey Wilson
Multi-Media		EC's Team	EnforcementTeam 4
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$2,500

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	Subtotal 1	\$250
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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: No enhancement recommended.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes: Respondent does not meet the culpability criteria.

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

Notes: The Respondent does not meet the good faith criteria.

Total EB Amounts	\$12	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$140	*Capped at the Total EB \$ Amount		

<b>SUM OF SUBTOTALS 1-7</b>	Final Subtotal	\$250
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	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	\$250
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<b>STATUTORY LIMIT ADJUSTMENT</b>	Final Assessed Penalty	\$250
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<b>DEFERRAL</b>	Reduction	Adjustment	
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No Deferral offered because settlement was not achieved within the 60 day expedited settlement period.

<b>PAYABLE PENALTY</b>	\$250
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Screening Date 1-Dec-2006

Docket No. 2006-2040-LII-E

PCW

Respondent Brendan L. Wachtendorf

Policy Revision 2 (September 2002)

Case ID No. 31840

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN103608964

Media [Statute] Irrigators

Enf. Coordinator Harvey Wilson

### 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 submitted)	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)

N/A

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

No enhancement recommended.

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

Screening Date 1-Dec-2006

Docket No. 2006-2040-LII-E

PCW

Respondent Brendan L. Wachtendorf

Policy Revision 2 (September 2002)

Case ID No. 31840

PCW Revision November 17, 2006

Reg. Ent. Reference No. RN103608964

Media [Statute] Irrigators

Enf. Coordinator Harvey Wilson

Violation Number 1

Rule Cite(s) 30 Texas Admin. Code §§ 30.5(a) and 344.4(a), Tex. Water Code § 37.003, and Tex. Occupations Code § 1903.251

Violation Description Failed to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system and representing to the public that he could perform a service for which a license is required. Specifically, Mr. Wachtendorf installed an irrigation system at 15011 Badger Ranch Boulevard, Woodway, McLennan County on or about November 2, 2005, without having a current license. Mr. Wachtendorf's license had expired on July 31, 2005.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				0%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
	x			10%

Matrix Notes

100% of the rule requirements were not met.

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 1 Number of violation days 23

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$250

One single event is recommended.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$12

Violation Final Penalty Total \$250

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

## Economic Benefit Worksheet

Respondent **Brendan L. Wachtendorf**  
 Case ID No. **31840**  
 Reg. Ent. Reference No. **RN103608964**  
**Media Irrigators**  
 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
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No commas or \$

### 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	\$140	2-Nov-2005	30-Jun-2007	1.7	\$12	n/a	\$12
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

The estimated cost of maintaining an Landscape Irrigator License. Date Required is the date the illegal service was contracted for. Final Date is the estimated day 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

\$140

TOTAL

\$12

# Compliance History

Customer/Respondent/Owner-Operator: CN602128928 WACHTENDORF, BRENDAN L Classification: Rating:  
Regulated Entity: RN103608964 WACHTENDORF, BRENDAN L Classification: Site Rating:  
ID Number(s): Landscape Irrigator License No. 8362 Expired  
Location: 10400 Hiawatha Drive, Waco, TX 76712  
TCEQ Region: REGION 09 - WACO  
Date Compliance History Prepared: November 28, 2006  
Agency Decision Requiring Compliance Enforcement  
Compliance Period: November 28, 2001 to November 28, 2006

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

Name: Harvey Wilson Phone: 239-0321

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
- B. Any criminal convictions of the state of Texas and the federal government.  
N/A
- C. Chronic excessive emissions events.  
N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
N/A
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
- F. Environmental audits.  
N/A
- G. Type of environmental management systems (EMSs).  
N/A
- H. Voluntary on-site compliance assessment dates.  
N/A
- I. Participation in a voluntary pollution reduction program.

N/A

- J. Early compliance.

N/A

Sites Outside of Texas

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
BRENDAN L. WACHTENDORF;  
RN103608964

§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2006-2040-LII-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 37, TEX. OCC. CODE ch. 1903, 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 Brendan L. Wachtendorf ("Mr. Wachtendorf").

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

**FINDINGS OF FACT**

1. Mr. Wachtendorf previously held landscape irrigator license no. LI0008362, which expired on July 31, 2005. Mr. Wachtendorf sold, designed, and installed a landscape irrigation system at a private residence located at 15011 Badger Ranch Boulevard, Woodway, McLennan County, Texas (the "Site"). Therefore, Mr. Wachtendorf is subject to TCEQ jurisdiction pursuant to TEX. OCC. CODE ch. 1903 and TEX. WATER CODE chs. 7 and 37.
2. During an investigation conducted on November 8, 2006, a TCEQ Central Office investigator documented that Mr. Wachtendorf failed to hold a valid irrigator license when selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system, and represented to the public that he performed said services, for which a license is required. Specifically, on or about November 2, 2005, Mr. Wachtendorf installed an irrigation system at the Site without a current, valid landscape irrigator license, after his previous irrigator license expired on July 31, 2005.
3. Mr. Wachtendorf received notice of the violation on or about November 27, 2006.

4. 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 Brendan L. Wachtendorf" (the "EDPRP") in the TCEQ Chief Clerk's office on September 17, 2007.
5. By letter dated September 17, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Wachtendorf 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 Mr. Wachtendorf received notice of the EDPRP.
6. More than 20 days have elapsed since Mr. Wachtendorf received notice of the EDPRP, provided by the Executive Director. Mr. Wachtendorf 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 No. 1, Mr. Wachtendorf is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 37, TEX. OCC. CODE ch. 1903, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Mr. Wachtendorf failed to hold a valid irrigator license when selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system, and represented to the public that he performed said services, for which a license is required, in violation of 30 TEX. ADMIN. CODE §§ 30.5(a) and 344.4(a), TEX. WATER CODE § 37.003, and TEX. OCC. CODE § 1903.251.
3. As evidenced by Finding of Fact Nos. 4 and 5, the Executive Director timely served Mr. Wachtendorf with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 6, Mr. Wachtendorf 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. Wachtendorf 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. Wachtendorf for violations of the Texas Water 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 two hundred fifty dollars (\$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. Wachtendorf is assessed an administrative penalty in the amount of two hundred fifty dollars (\$250.00) for violations of the Texas Water Code, the Texas Occupations Code, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Wachtendorf'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: Brendan L. Wachtendorf; Docket No. 2006-2040-LII-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. Wachtendorf shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Order, Mr. Wachtendorf shall cease selling, designing, installing, maintaining, altering, repairing, or servicing irrigation systems, and shall cease representing to the public that he can perform said services, until properly licensed by the Commission pursuant to TEX. OCC. CODE ch. 1903 and TEX. WATER CODE ch. 37.

- b. Within 15 days after the effective date of this Order, Mr. Wachtendorf shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 2.a. 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. Wachtendorf shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 2.a. 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:

Robert Mann, Manager, Regulatory Compliance Section  
Compliance Support Division, MC 178  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

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. Wachtendorf.
5. If Mr. Wachtendorf 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. Wachtendorf's failure to comply is not a violation of this Order. Mr. Wachtendorf shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Wachtendorf shall notify the Executive

Director within seven days after Mr. Wachtendorf 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. Wachtendorf shall be made in writing to the Executive Director. Extensions are not effective until Mr. Wachtendorf 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. Wachtendorf if the Executive Director determines that Mr. Wachtendorf 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

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For the Commission

**AFFIDAVIT OF LENA ROBERTS**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Lena Roberts. 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 Brendan L. Wachtendorf” (the “EDPRP”) was filed with the Office of the Chief Clerk on September 17, 2007.

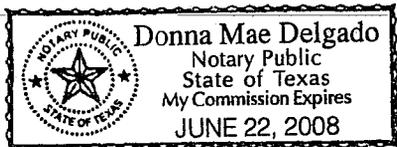
The EDPRP was mailed to Mr. Wachtendorf at his last known address on September 17, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed.” The first class mail has not been returned, indicating that Mr. Wachtendorf received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

Lena Roberts, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Lena Roberts, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 6<sup>th</sup> day of November, A.D., 2007.

  
Notary Signature