

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input checked="" type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaints Relating to this Case: November 27, 2006</p> <p>Date of Investigation Relating to this Case: December 8, 2006</p> <p>Date of NOV/NOE Relating to this Case: February 28, 2007 (NOV); April 9, 2007 (NOE)</p> <p>Background Facts: The EDPRP was mailed and filed on October 23, 2007. The Respondent has not filed an answer.</p> <p>The Respondent in this case does not owe any other penalties according to the Administrative Penalty Database Report.</p> <p>LII</p> <p>1. Failed to comply with local requirements, ordinances, and regulations designed to protect the public water supply [TEX. WATER CODE § 37.013, and 30 TEX. ADMIN. CODE § 344.70].</p> <p>2. Failed to provide a written licensed irrigator's agreement to install an irrigation system that specifies the licensed irrigator's name, license number, business address and telephone number, date that the agreement was signed by each party, total agreed price, the design number or copy of the design, and the statement "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087" [30 TEX. ADMIN. CODE § 344.94(a) and (b)].</p>	<p>Total Assessed: \$1,575</p> <p>Total Due to General Revenue: \$1,575</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 N/A</p> <p>Person Compliance History Classification N/A</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Technical Requirements:</p> <p>The Respondent shall:</p> <p>1. Within 30 days:</p> <p>a. Comply with all local requirements of the City of Amarillo, including the requirement to ensure that all lateral lines are buried at least twelve inches deep and to provide a backflow report to the City of Amarillo including but not limited to ensuring that all lateral lines at 6821 Blacksmith Lane, Amarillo, Randall County, Texas are buried at least 12 inches deep; and</p> <p>b. Ensure that all written licensed irrigator's agreements to install an irrigation system include the name, license number, business address and telephone number, date that the agreement was signed by each party, total agreed price, the design number or a copy of the design, and the statement "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087."</p> <p>2. Within 45 days, submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with the Ordering Provisions above.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision March 19, 2007

DATES	Assigned	10-Apr-2007	Screening	11-Apr-2007	EPA Due	
	PCW	6-Sep-2007				

RESPONDENT/FACILITY INFORMATION	
Respondent	David Gayle Lovett
Reg. Ent. Ref. No.	RN103386561
Facility/Site Region	1-Amarillo
Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	33202	No. of Violations	2	
Docket No.	2007-0592-LII-E	Order Type	1660	
Media Program(s)	Irrigators	Enf. Coordinator	Thomas Barnett	
Multi-Media		EC's Team	EnforcementTeam 2	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$2,500

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,500
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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	5% Enhancement	Subtotals 2, 3, & 7	\$75
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Notes: The enhancement is based on one Notice of Violation for the same or similar violations as in the current enforcement action.

Culpability	No	0% Enhancement	Subtotal 4	\$0
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Notes: The 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	\$239	0% Enhancement*	Subtotal 6	\$0
Approx. Cost of Compliance	\$3,300	*Capped at the Total EB \$ Amount		

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,575
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OTHER FACTORS AS JUSTICE MAY REQUIRE	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount	\$1,575
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,575
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DEFERRAL	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral not offered for non-expedited settlement

PAYABLE PENALTY	\$1,575
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Screening Date 11-Apr-2007

Docket No. 2007-0592-LII-E

PCW

Respondent David Gayle Lovett

Policy Revision 2 (September 2002)

Case ID No. 33202

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN103386561

Media [Statute] Irrigators

Enf. Coordinator Thomas Barnett

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 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) 5%

>> 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

The enhancement is based on one Notice of Violation for the same or similar violations as in the current enforcement action.

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

Screening Date 11-Apr-2007

Docket No. 2007-0592-LII-E

PCW

Respondent David Gayle Lovett

Policy Revision 2 (September 2002)

Case ID No. 33202

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN103386561

Media [Statute] Irrigators

Enf. Coordinator Thomas Barnett

Violation Number

Rule Cite(s)

30 Tex. Admin. Code § 344.70 and Tex. Water Code § 37.013

Violation Description

Failed to comply with local requirements, ordinances, and regulations designed to protect the public water supply. Specifically, the respondent failed to install the lateral lines 12 inches deep as required by the City of Amarillo and failed to provide a backflow report to the City of Amarillo, for an irrigation system installed at 6821 Blacksmith Lane.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="25%"/>
	Potential	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

Matrix Notes

Failure to install an irrigation system in compliance with local regulations could contaminate the local water supply which could expose customers of the water supply to significant amount of pollutants that could exceed levels protective of human health.

Adjustment

Violation Events

Number of Violation Events

Number of violation days

mark only one with an x	daily	<input type="text"/>
	monthly	<input type="text"/>
	quarterly	<input type="text"/>
	semiannual	<input type="text" value="x"/>
	annual	<input type="text"/>
single event	<input type="text"/>	

Violation Base Penalty

Two semiannual events are recommended from the date of the investigation to the date of case screening.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount

Violation Final Penalty Total

This violation Final Assessed Penalty (adjusted for limits)

Economic Benefit Worksheet

Respondent: David Gayle Lovett
Case ID No.: 33202
Reg. Ent. Reference No.: RN103386561
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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Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction	\$3,000	8-Dec-2006	31-Dec-2007	1.1	\$11	\$213	\$223
Land				0.0	\$0	n/a	\$0
Record Keeping System	\$100	8-Dec-2006	31-Dec-2007	1.1	\$5	n/a	\$5
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

Estimated costs to provide a backflow report to the City of Amarillo and to reinstall the irrigation system to comply with local requirements. The date required is the date of the investigation and the final date is estimated date of compliance.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

There are no avoided costs associated with this violation.

Approx. Cost of Compliance

\$3,100

TOTAL

\$229

Screening Date 11-Apr-2007

Docket No. 2007-0592-LII-E

PCW

Respondent David Gayle Lovett

Policy Revision 2 (September 2002)

Case ID No. 33202

PCW Revision March 19, 2007

Reg. Ent. Reference No. RN103386561

Media [Statute] Irrigators

Enf. Coordinator Thomas Barnett

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 344.94(a) and (b)

Violation Description

Failed to provide a written licensed irrigator's agreement to install an irrigation system that specifies the licensed irrigator's name, license number, business address and telephone number, date that the agreement was signed by each party, total agreed price, the design number or a copy of the design and the statement "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087." Specifically, a copy of the irrigator's agreement for the installation of the system at 6821 Blacksmith Lane did not contain the required information.

Base Penalty \$2,500

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	X		

Percent 10%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$2,250

\$250

Violation Events

Number of Violation Events 1

124 Number of violation days

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 \$11

Violation Final Penalty Total \$263

This violation Final Assessed Penalty (adjusted for limits) \$263

Economic Benefit Worksheet

Respondent: David Gayle Lovett

Case ID No. 33202

Reg. Ent. Reference No. RN103386561

Media Irrigators

Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description No commas or \$

Item Description	Item Cost	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)	\$200	8-Dec-2006	31-Dec-2007	1.1	\$11	n/a	\$11

Notes for DELAYED costs

Estimated cost to update all written materials to meet Agency requirements. The date required is the date of the investigation and the final date is the estimated date of return to 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

There are no avoided costs associated with this violation.

Approx. Cost of Compliance

\$200

TOTAL

\$11

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
DAVID GAYLE LOVETT;
RN103386561

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2007-0592-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. OCCUPATIONS 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 David Gayle Lovett ("Mr. Lovett").

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

FINDINGS OF FACT

1. Mr. Lovett owns and operates a landscape irrigation business located at 3604 Randall Street, Amarillo, Randall County, Texas (the "Business").
2. Mr. Lovett sells, designs, consults, installs, maintains, alters, repairs, and/or services landscape irrigation systems. Therefore, Mr. Lovett is subject to TCEQ jurisdiction pursuant to TEX. OCCUPATIONS CODE ch. 1903, TEX. WATER CODE ch. 37, and 30 TEX. ADMIN. CODE chs. 30 and 344.
3. During a record review conducted on December 8, 2006, a TCEQ Compliance Support Division investigator documented that Mr. Lovett:
 - a. Failed to comply with local requirements, ordinances, and regulations designed to protect the public water supply. Specifically, Mr. Lovett failed to install the lateral lines 12 inches deep as required by the City of Amarillo, and failed to provide a backflow report to the City of Amarillo, for an irrigation system at 6821 Blacksmith Lane, Amarillo, Randall County, Texas; and
 - b. Failed to provide a written licensed irrigator's agreement to install an irrigation system that specifies the licensed irrigator's name, license number, business address

and telephone number, date that the agreement was signed by each party, total agreed price, the design number or copy of the design, and the statement "Irrigation in Texas is regulated by the Texas Commission on Environmental Quality, P.O. Box 13087, Austin Texas 78711-3087." Specifically, a copy of the irrigator's agreement for the installation of the system at 6821 Blacksmith Lane, Amarillo, Randall County, Texas, did not contain the required information.

4. Mr. Lovett received notice of the violations on or about April 14, 2007.
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 David Gayle Lovett" (the "EDPRP") in the TCEQ Chief Clerk's office on October 23, 2007.
6. By letter dated October 23, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Lovett with notice of the EDPRP. According to the return receipt "green card," Mr. Lovett received notice of the EDPRP on October 25, 2007, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Lovett received notice of the EDPRP, provided by the Executive Director. Mr. Lovett 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. Lovett is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 37, TEX. OCCUPATIONS CODE ch. 1903, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Lovett failed to comply with local requirements, ordinances, and regulations designed to protect the public water supply. Specifically, Mr. Lovett failed to install the lateral lines 12 inches deep as required by the City of Amarillo, and failed to provide a backflow report to the City of Amarillo, for an irrigation system at 6821 Blacksmith Lane, Amarillo, Randall County, Texas, in violation of TEX. WATER CODE § 37.013, and 30 TEX. ADMIN. CODE § 344.70.
3. As evidenced by Finding of Fact No. 3.b., Mr. Lovett failed to provide a written licensed irrigator's agreement to install an irrigation system that specifies the licensed irrigator's name, license number, business address and telephone number, date that the agreement was signed by each party, total agreed price, the design number or copy of the design, and the statement "Irrigation in Texas is regulated by the Texas Commission on Environmental

Quality, P.O. Box 13087, Austin Texas 78711-3087.” Specifically, a copy of the irrigator’s agreement for the installation of the system at 6821 Blacksmith Lane, Amarillo, Randall County, Texas, did not contain the required information, in violation of 30 TEX. ADMIN. CODE § 344.94(a) and (b).

4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Lovett 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. Lovett 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. Lovett 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. Lovett 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.
7. An administrative penalty in the amount of one thousand five hundred seventy-five dollars (\$1,575.00) 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. Lovett is assessed an administrative penalty in the amount of one thousand five hundred seventy-five dollars (\$1,575.00) for violations of the TEX. WATER CODE chs. 7 and 37, TEX. OCCUPATIONS CODE ch. 1903, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Lovett’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: David Gayle Lovett; Docket No. 2007-0592-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. Lovett shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Mr. Lovett shall:
 - i. Ensure that all written licensed irrigator's agreements to install an irrigation system include the name, license number, business address and telephone number, date that the agreement was signed by each party, total agreed price, the design number or a copy of the design, and the statement “Irrigation in Texas is regulated by the Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.”, as required by TEX. ADMIN. CODE § 344.94; and
 - ii. Comply with all local requirements of the City of Amarillo, including the requirement to ensure that all lateral lines are buried at least twelve inches deep and to provide a backflow report to the City of Amarillo, as required by 30 TEX. ADMIN. CODE § 344.70, including but not limited to ensuring that all lateral lines at 6821 Blacksmith Lane, Amarillo, Randall County, Texas are buried at least 12 inches deep.
 - b. Within 45 days after the effective date of this Order, Mr. Lovett shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 2.a.i. through 2.a.ii. 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. Lovett shall submit the written certification and copies of documentation 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:

Jim McWilliams, Water Section Manager
Texas Commission on Environmental Quality
Amarillo Regional Office
3918 Canyon Drive
Amarillo, Texas 79109-4933

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. Lovett. Mr. Lovett is ordered to give notice of this Order to personnel who maintain day-to-day control over the Business operations referenced in this Order.
5. If Mr. Lovett 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. Lovett's failure to comply is not a violation of this Order. Mr. Lovett shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Lovett shall notify the Executive Director within seven days after Mr. Lovett 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. Lovett shall be made in writing to the Executive Director. Extensions are not effective until Mr. Lovett receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

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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. Lovett if the Executive Director determines that Mr. Lovett 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 ANNA M. COX

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Anna M. Cox. 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 David Gayle Lovett” (the “EDPRP”) was filed with the Office of the Chief Clerk on October 23, 2007.

The EDPRP was mailed to Mr. Lovett at his last known address on October 23, 2007, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Lovett received notice of the EDPRP on October 25, 2007, as evidenced by the signature on the card.

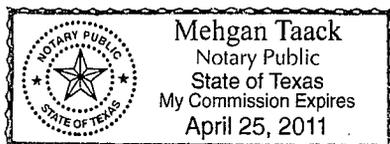
More than 20 days have elapsed since Mr. Lovett received notice of the EDPRP. Mr. Lovett failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”

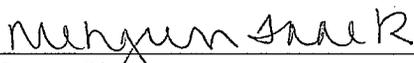


Anna M. Cox, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Anna M. Cox, 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 27th day of December, A.D., 2007.





Notary Signature