EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2007-0981-MLM-E TCEQ ID: RN102997939 CASE NO.: 33871
RESPONDENT NAME: WILMER POWELL

ORDER TYPE:		
_1660 AGREED ORDER	__FINDINGS AGREED ORDER	__FINDINGS ORDER FOLLOWING SOAH HEARING
_X_FINDINGS DEFAULT ORDER	__SHUTDOWN ORDER	__IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
__AMENDED ORDER	__EMERGENCY ORDER	
CASE TYPE:		
__X AIR	__X_MULTI-MEDIA (check all that apply)	__INDUSTRIAL AND HAZARDOUS WASTE
__PUBLIC WATER SUPPLY	__PETROLEUM STORAGE TANKS	__OCCUPATIONAL CERTIFICATION
__WATER QUALITY	__SEWAGE SLUDGE	__UNDERGROUND INJECTION CONTROL
_X_MUNICIPAL SOLID WASTE	__RADIOACTIVE WASTE	__ DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 196 Dunaway Drive, Trinity, Trinity County

TYPE OF OPERATION: Municipal solid waste transfer station

SMALL BUSINESS: __X__ Yes ____ No

OTHER SIGNIFICANT MATTERS: There are no complaints. There are no other 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 August 25, 2008. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Ms. Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
TCEQ Enforcement Coordinator: Mr. Clint Sims, Waste Enforcement Section, MC 169, (512) 239-6933
TCEQ Regional Contact: Mr. Keith Anderson, Beaumont Regional Office, MC R-10, (409) 898-3838
Respondent: Mr. Wilmer Powell, 196 Trinity Dunaway Drive, Texas 75862
Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
Type of Investigation: __ Complaint __ Routine _X_ Enforcement Follow-up __ Records Review **Date of Complaint Relating to this Case:** None **Date of Investigation Relating to this Case:** February 22, 2007 **Date of NOE Relating to this Case:** April 27, 2007 **Background Facts:** The EDPRP was filed on February 5, 2008 and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on February 12, 2008, as evidenced by the signature on the card. An EDFARP was sent to the Respondent on March 28, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice on the EDFARP on April 8, 2008, as evidenced by the signature on the card. The Respondent has failed to file an answer to the EDPRP or the EDFARP, failed to request a hearing, and failed to schedule a settlement conference. **Compliance Status:** Not yet in compliance. **MLM:** 1. Failed to comply with the prohibition on outdoor burning [30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b)]. 2. Failed to to notify the TCEQ of the intended operation of a low-volume transfer station [30 TEX. ADMIN. CODE §§ 330.11(g) and 330.5].	**Total Assessed:** $3,150 **Total Deferred:** $0 ___ Expedited Order ___ Financial Inability to Pay ___SEP Conditional Offset **Total Due to General Revenue:** $3,150 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. **Site Compliance History Classification** __ High _X_ Average __ Poor **Person Compliance History Classification** __ High _X_ Average __ Poor **Major Source:** __ Yes _X_ No **Applicable Penalty Policy:** September 1, 2002	**Technical Requirements:** The Respondent shall undertake the following technical requirements: 1. Immediately, cease all unauthorized burning at the Site. 2. Within 30 days, obtain a TCEQ registration for the operation of a low-volume transfer facility or remove all municipal solid waste including springs, metal cans, paper, and furniture, and dispose of the waste at an authorized facility. 3. Within 45 days, submit documentation to certify compliance with Ordering Provision Nos. 1 and 2.

Penalty Calculation Worksheet (PCW)

TCEQ

Policy Revision 2 (September 2002) — *PCW Revision May 25, 2007*

DATES					
Assigned	30-Apr-2007				
PCW	31-Aug-2007	Screening	19-Jun-2007	EPA Due	

RESPONDENT/FACILITY INFORMATION

Respondent	Wilmer Powell		
Reg. Ent. Ref. No.	RN102997939		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION

Enf./Case ID No.	33871	No. of Violations	2
Docket No.	2007-0981-MLM-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Enf. Coordinator	Colin Barth
Multi-Media	Air	EC's Team	EnforcementTeam 7
Admin. Penalty $ Limit Minimum	$0	Maximum	$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) — *Subtotal 1* $3,000

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* $150

Notes: The respondent received on NOV for similar violations at this site within the past five years.

Culpability — No — 0% Enhancement — *Subtotal 4* $0

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply — 0% Reduction — *Subtotal 5* $0

	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.

0% Enhancement* — *Subtotal 6* $0

**Capped at the Total EB $ Amount*

Total EB Amounts	$15
Approx. Cost of Compliance	$302

SUM OF SUBTOTALS 1-7 — *Final Subtotal* $3,150

OTHER FACTORS AS JUSTICE MAY REQUIRE — *Adjustment* $0

Reduces or enhances the Final Subtotal by the indicated percentage. *(Enter number only; e.g. -30 for -30%.)*

Notes:

Final Penalty Amount $3,150

STATUTORY LIMIT ADJUSTMENT — *Final Assessed Penalty* $3,150

DEFERRAL — 0% Reduction — *Adjustment* $0

Reduces the Final Assessed Penalty by the indicted percentage. *(Enter number only; e.g. 20 for 20% reduction.)*

Notes: Deferral not offered for non-expedited.

PAYABLE PENALTY $3,150

Screening Date 19-Jun-2007 **Docket No.** 2007-0981-MLM-E **PCW**

Respondent Wilmer Powell *Policy Revision 2 (September 2002)*

Case ID No. 33871 *PCW Revision May 25, 2007*

Reg. Ent. Reference No. RN102997939

Media [Statute] Municipal Solid Waste

Enf. Coordinator Colin Barth

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)

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 on NOV for similar violations at this site within the past five years.

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

Screening Date 19-Jun-2007 **Docket No.** 2007-0981-MLM-E **PCW**

Respondent Wilmer Powell *Policy Revision 2 (September 2002)*

Case ID No. 33871 *PCW Revision May 25, 2007*

Reg. Ent. Reference No. RN102997939

Media [Statute] Municipal Solid Waste

Enf. Coordinator Colin Barth

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 111.201 and Tex. Health & Safety Code § 382.085(b)

Violation Description Failed to comply with the prohibition on outdoor burning, as documented during an investigation conducted on February 22, 2007. Specifically, approximately 4 cubic yards of various municipal solid waste including: springs, metal cans, paper, and furniture had been burned at the site.

Base Penalty $10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm: Major	Moderate	Minor
Actual			x
Potential			

Percent 10%

>>Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes: Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation.

Adjustment $9,000

$1,000

Violation Events

Number of Violation Events 1 | 1 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty $1,000

One single event is recommended.

Economic Benefit (EB) for this violation

Estimated EB Amount $3

Statutory Limit Test

Violation Final Penalty Total $1,050

This violation Final Assessed Penalty (adjusted for limits) $1,050

Economic Benefit Worksheet

Respondent Wilmer Powell
Case ID No. 33871
Reg. Ent. Reference No. RN102997939
Media Municipal Solid Waste
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description (No commas or $)	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	$52	22-Feb-2007	9-Feb-2008	1.0	$3	n/a	$3
Permit Costs				0.0	$0	n/a	$0
Other (as needed)				0.0	$0	n/a	$0
Notes for DELAYED costs	Estimated cost to remove and properly dispose of approximately 4 cubic yards of municipal solid waste from the investigation date to the 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							

Approx. Cost of Compliance: $52

TOTAL: $3

Screening Date 19-Jun-2007 **Docket No.** 2007-0981-MLM-E **PCW**

Respondent Wilmer Powell *Policy Revision 2 (September 2002)*

Case ID No. 33871 *PCW Revision May 25, 2007*

Reg. Ent. Reference No. RN102997939

Media [Statute] Municipal Solid Waste

Enf. Coordinator Colin Barth

Violation Number 2

Rule Cite(s) 30 Tex. Admin. Code §§ 330.11(g) and 330.5

Violation Description Failed to notify the commission of the intended operation of a low-volume transfer station, as documented during an investigation conducted on February 22, 2007. Specifically, at the time of the investigation no registration was received by the commission regarding the operation of a low-volume municipal solid waste transfer station.

Base Penalty $10,000

>> 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 $9,000

$1,000

Violation Events

Number of Violation Events 2

117 Number of violation days

mark only one with an x

daily	
monthly	
quarterly	x
semiannual	
annual	
single event	

Violation Base Penalty $2,000

Two quarterly events are recommended from the investigation date of February 22, 2007 to the June 19, 2007 screening date.

Economic Benefit (EB) for this violation

Estimated EB Amount $12

Statutory Limit Test

Violation Final Penalty Total $2,100

This violation Final Assessed Penalty (adjusted for limits) $2,100

Economic Benefit Worksheet

Respondent Wilmer Powell
Case ID No. 33871
Reg. Ent. Reference No. RN102997939
Media Municipal Solid Waste
Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	$250	22-Feb-2007	9-Feb-2008	1.0	$12	n/a	$12
Other (as needed)				0.0	$0	n/a	$0

Notes for DELAYED costs: Estimated cost to obtain a registration as a low-volume transfer station from the investigation date to the 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:

Approx. Cost of Compliance: $250

TOTAL: 117 $12

Compliance History

Customer/Respondent/Owner-Operator:	CN601535867	POWELL, WILMER	Classification: AVERAGE	Rating: 6.00
Regulated Entity:	RN102997939	POWELL WILMER	Classification: AVERAGE	Site Rating: 6.00

ID Number(s): MUNICIPAL SOLID WASTE DISPOSAL PERMIT 455100053

Location: 196 DUNAWAY DR, TRINITY, TRINITY COUNTY, TX, 75862 Rating Date: September 01 06 Repeat Violator: NO

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: June 07, 2007

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 07, 2002 to June 07, 2007

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

Name: Colin Barth Phone: 512 239 0086

Site Compliance History Components

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

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

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

N/A

C. Chronic excessive emissions events.

N/A

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

1 04/27/2007 (542362)

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

Date: 05/12/2003 (28121)

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 111, SubChapter B 111.201
30 TAC Chapter 330, SubChapter A 330.15

Description: Failure to comply with the outdoor burning rules.

Self Report? NO Classification: Moderate

Citation: 30 TAC Chapter 330, SubChapter A 330.11(g)
30 TAC Chapter 330, SubChapter A 330.5[G]

Description: Failure to register transfer facility.

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	§	**BEFORE THE**
ENFORCEMENT ACTION	§	
CONCERNING	§	**TEXAS COMMISSION ON**
WILMER POWELL	§	
RN102997939	§	**ENVIRONMENTAL QUALITY**

DEFAULT ORDER
DOCKET NO. 2007-0981-MLM-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 TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE chs. 361 and 382 and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty and corrective action of the respondent. The respondent made the subject of this Order is Wilmer Powell ("Mr. Powell").

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

FINDINGS OF FACT

1. Mr. Powell owns and operates an unauthorized municipal solid waste transfer station at 196 Dunaway Drive in Trinity, Trinity County, Texas (the "Site").

2. The Site involves or involved the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361 and consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).

3. During an inspection conducted on February 22, 2007, a TCEQ Beaumont Regional Office investigator documented that Mr. Powell violated the following requirements:

   a. Failed to comply with the prohibition on outdoor burning. Specifically, approximately 4 cubic yards of various municipal solid waste including: springs, metal cans, paper, and furniture had been burned at the Site.

   b. Failed to notify the TCEQ of the intended operation of a low-volume transfer station. Specifically, at the time of the investigation no registration was received by the TCEQ regarding the operation of a low-volume municipal solid waste transfer station.

4. Mr. Powell received notice of the violations on or about May 2, 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 Wilmer Powell" (the "EDPRP") in the TCEQ Chief Clerk's office on February 5, 2008.

6. By letter dated February 5, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Powell with notice of the EDPRP. According to the return receipt "green card", Mr. Powell received notice of the EDPRP on February 12, 2008, as evidenced by the signature on the card.

7. 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 Wilmer Powell" (the "EDFARP") in the TCEQ Chief Clerk's office on March 28, 2008.

8. By letter dated March 28, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Powell with notice of the EDFARP. According to the return receipt "green card", Mr. Powell received notice of the EDFARP on April 8, 2008, as evidenced by the signature on the card.

9. More than 20 days have elapsed since Mr. Powell received notice of the EDPRP and the EDFARP, provided by the Executive Director. Mr. Powell failed to file an answer to the EDPRP or 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. Powell is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE chs. 361 and 382 and the rules of the Commission.

2. As evidenced by Finding of Fact No. 3.a., Mr. Powell failed to comply with the prohibition on outdoor burning, in violation of 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b).

3. As evidenced by Finding of Fact No. 3.b., Mr. Powell failed to to notify the TCEQ of the intended operation of a low-volume transfer station, in violation of 30 TEX. ADMIN. CODE §§ 330.11(g) and 330.5.

4. As evidenced by Finding of Fact Nos. 5, 6, 7 and 8, the Executive Director has timely served Mr. Powell with proper notice of the EDPRP and the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).

5. As evidenced by Finding of Fact No. 9, Mr. Powell has failed to file a timely answer to the EDPRP or EDFARP, 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. Powell 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. Powell 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 one hundred fifty dollars ($3,150.00) 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. Powell is assessed an administrative penalty in the amount of three thousand one hundred fifty dollars ($3,150.00) for violations of HEALTH & SAFETY CODE chs. 361 and 382 and rules of the TCEQ. The payment of this administrative penalty and Mr. Powell'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: Wilmer Powell; Docket No. 2007-0981-MLM-E" to:

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

2. Mr. Powell shall undertake the following technical requirements:

a. Immediately upon the effective date of the Commission Order, Mr. Powell shall cease all unauthorized burning at the Site, in accordance with 30 TEX. ADMIN. CODE § 111.201 and TEX. HEALTH & SAFETY CODE § 382.085(b) ;

b. Within 30 days after the effective date of the Commission Order, Mr. Powell shall obtain a TCEQ registration for the operation of a low-volume transfer facility or remove all municipal solid waste including: springs, metal cans, paper, and furniture and dispose of the waste at an authorized facility, in accordance with 30 TEX. ADMIN. CODE §§ 330.11(g), 330.5, and 330.15; and

c. Within 45 days after the effective date of the Commission Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No(s). 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."

The certification shall be submitted 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:

Waste Section Manager
Beaumont Regional Office
Texas Commission on Environmental Quality
3870 Eastex Freeway
Beaumont, Texas 77703-1892

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. Powell. Mr. Powell is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.

5. If Mr. Powell 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. Powell's failure to comply is not a violation of this Order. Mr. Powell shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Powell shall notify the Executive Director within seven days after Mr. Powell 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. Powell shall be made in writing to the Executive Director. Extensions are not effective until Mr. Powell 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. Powell if the Executive Director determines that Mr. Powell 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.

AFFIDAVIT OF LAURENCIA N. FASOYIRO

STATE OF TEXAS §
§
COUNTY OF HARRIS §

"My name is Laurencia N. Fasoyiro. 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 Wilmer Powell" (the "EDPRP") with the Office of the Chief Clerk on February 5, 2008.

I sent the EDPRP to Mr. Powell at his last known address on February 5, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card", Mr. Powell received notice of the EDPRP on February 12, 2008, as evidenced by the signature on the card.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I 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 Wilmer Powell" (the "EDFARP") with the Office of the Chief Clerk on March 28, 2008.

I sent the EDFARP to Mr. Powell at his last known address on March 28, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card", Mr. Powell received notice of the EDFARP on April 8, 2008, as evidenced by the signature on the card.

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

Laurencia N. Fasoyiro
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Laurencia N. Fasoyiro , 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 20 day of June, A.D., 2008.

Notary Stamp

MARIA E. ORTEGA
NOTARY PUBLIC
STATE OF TEXAS
My Comm. Exp. 04-01-2010

Notary Signature