

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO.: 2008-0597-MLM-E TCEQ ID: RN105168314 CASE NO.: 35700
RESPONDENT NAME: FRANK E. DANIELS

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 checked="" type="checkbox"/> AIR	<input checked="" 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 checked="" 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>SITE WHERE VIOLATION(S) OCCURRED: 1407 Novella Avenue, Adkins, Bexar County</p> <p>TYPE OF OPERATION: Animal feeding operation</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>OTHER SIGNIFICANT MATTERS: One complaint has been received. The complaint alleged that pig odors were coming from the Respondent's property. There is no record of additional pending enforcement actions regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired April 5, 2009. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Ms. Jacquelyn Boutwell, Litigation Division, MC 175, (239-5846) Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019 TCEQ Enforcement Coordinator: Mr. James Nolan, Air Enforcement Section, MC 149, (512) 239-6634 TCEQ Regional Contact: Mr. Rick Hite, Air Section Manager, San Antonio Regional Office, MC R-13, (210) 403-4030 Respondent: Mr. Frank E. Daniels, 622 Kayroe Road, Adkins, Texas 78101 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

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 type="checkbox"/> Records Review</p> <p>Date of Complaint Relating to this Case: April 10, 2007</p> <p>Date of Investigation Relating to this Case: March 12, 2008</p> <p>Date of NOE Relating to this Case: March 21, 2008</p> <p>Background Facts: The EDPRP was filed on November 12, 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 November 15, 2008, as evidenced by the signature on the card. The Respondent has failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p>Current Compliance Status: Not yet in compliance.</p> <p>MLM: Failed to prevent a nuisance condition [30 TEX. ADMIN. CODE §§ 101.4 and 321.47(c)(2) and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b)].</p>	<p>Total Assessed: \$ 1,050</p> <p>Total Deferred: \$ 0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay <input type="checkbox"/> SEP Conditional Offset</p> <p>Total Due to General Revenue: \$ 1,050</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provision(s):</p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 30 days, implement procedures designed to mitigate odors from the animal feeding operations. 2. Within 45 days, submit written certification and detailed supporting documentation to demonstrate compliance with Ordering Provision No. 1.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

DATES	Assigned	31-Mar-2008	Screening	8-Apr-2008	EPA Due	
	PCW	21-Jul-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Frank E. Daniels
Reg. Ent. Ref. No.	RN105168314
Facility/Site Region	13-San Antonio
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	35700	No. of Violations	1
Docket No.	2008-0597-MLM-E	Order Type	1660
Media Program(s)	Air	Enf. Coordinator	Sidney Wheeler
Multi-Media	Water Quality	EC's Team	Enforcement Team 4
Admin. Penalty \$	Limit Minimum \$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$1,000
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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	Subtotal 2, 3, & 7	\$50
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Notes: Enhancement due to one similar NOV.

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 EDRP/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
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Total EB Amounts	\$146	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$5,000	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,050
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount **\$1,050**

STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,050
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DEFERRAL	0% 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: Deferral not offered for non-expedited settlement.

PAYABLE PENALTY	\$1,050
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Screening Date 8-Apr-2008	Docket No. 2008-0597-MLM-E	PCW
Respondent Frank E. Daniels	<i>Policy Revision 2 (September 2002)</i>	
Case ID No. 35700	<i>PCW Revision February 29, 2008</i>	
Reg. Ent. Reference No. RN105168314		
Media [Statute] Air		
Enf. Coordinator Sidney Wheeler		

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 <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	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 <i>(number of judgments or consent decrees meeting criteria)</i>	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 <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	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 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
<i>Please Enter Yes or No</i>			
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)**

Adjustment Percentage (Subtotal 3) 0%

>> **Compliance History Person Classification (Subtotal 7)**

Adjustment Percentage (Subtotal 7) 0%

>> **Compliance History Summary**

Compliance History Notes Enhancement due to one similar NOV.

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

Screening Date	8-Apr-2008	Docket No.	2008-0597-MLM-E	PCW
Respondent	Frank E. Daniels			Policy Revision 2 (September 2002)
Case ID No.	35700			PCW Revision February 29, 2008
Reg. Ent. Reference No.	RN105168314			
Media [Statute]	Air			
Enf. Coordinator	Sidney Wheeler			
Violation Number	1			

Rule Cite(s) 30 Tex. Admin. Code §§ 101.4 and 321.47(c)(2) and Tex. Health & Safety Code § 382.085(a) and (b)

Violation Description Failed to prevent a nuisance condition. Specifically, the Respondent has failed to prevent or minimize odors at the animal feeding operations site on March 12, 2008, as documented during an investigation conducted on March 12, 2008.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR	Harm				
	Release	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 an insignificant amount of pollutants as a result of this violation.

Adjustment \$9,000

\$1,000

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"/>
	annual	<input type="text"/>
single event	<input checked="" type="checkbox"/>	

Violation Base Penalty \$1,000

One single event is recommended.

Economic Benefit (EB) for this violation **Statutory/Limit Test**

Estimated EB Amount \$146

Violation Final Penalty Total \$1,050

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

Economic Benefit Worksheet

Respondent: Frank E. Daniels
Case ID No.: 35700
Reg. Ent. Reference No.: RN105168314
Media: Air
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				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	\$5,000	12-Mar-2008	11-Oct-2008	0.6	\$146	N/A	\$146
Permit Costs				0.0	\$0	N/A	\$0
Other (as needed)				0.0	\$0	N/A	\$0

Notes for DELAYED costs
 Estimated cost to clean hog pens and dispose of waste as necessary in order to eliminate nuisance odors at the site. Date required is the date of noncompliance and the final date is the estimated compliance date.

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
 (This section is currently blank.)

Approx. Cost of Compliance \$5,000 **TOTAL** \$146

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
FRANK E. DANIELS;
RN105168314**

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§
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§

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

**DEFAULT ORDER
DOCKET NO. 2008-0597-MLM-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 ch. 7, TEX. HEALTH & SAFETY CODE ch. 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 Frank E. Daniels ("Frank Daniels").

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

FINDINGS OF FACT

1. Frank Daniels owns and operates an animal feeding operation located at 1407 Novella Avenue in Adkins, Bexar County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12).
3. During an investigation conducted on March 12, 2008, a TCEQ Regional Office investigator documented that Frank Daniels failed to prevent a nuisance condition. Specifically, the Respondent failed to prevent or minimize odors at the animal feeding operations site on March 12, 2008.
4. Frank Daniels received notice of the violation on or about March 26, 2008.
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 Frank E. Daniels" (the "EDPRP") in the TCEQ Chief Clerk's office on November 12, 2008.

6. By letter dated November 12, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Frank Daniels with notice of the EDPRP. According to the return receipt "green card," Frank Daniels received notice of the EDPRP on November 15, 2008, as evidenced by his signature on the card.
7. More than 20 days have elapsed since Frank Daniels received notice of the EDPRP, provided by the Executive Director. Frank Daniels 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, Frank Daniels is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 382, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Frank Daniels failed to prevent a nuisance condition, in violation of 30 TEX. ADMIN. CODE §§ 101.4 and 321.47(c)(2) and TEX. HEALTH & SAFETY CODE § 382.085(a) and (b).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Frank Daniels with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Frank Daniels 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 Frank Daniels 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 Frank Daniels 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.
6. An administrative penalty in the amount of one thousand fifty dollars (\$1,050.00) 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. Frank Daniels is assessed an administrative penalty in the amount of one thousand fifty dollars (\$1,050.00) for violations of the Texas Water Code and Texas Health and Safety Code, and the rules of the TCEQ. The payment of this administrative penalty and Frank Daniels'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: Frank E. Daniels; Docket No. 2008-0597-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. Frank Daniels shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, Frank Daniels shall implement procedures designed to mitigate odors from the animal feeding operations; and
 - b. Within 45 days after the effective date of this Order, Frank Daniels 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.”

Frank Daniels 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:

Rick Hite, Air Section Manager
Texas Commission on Environmental Quality
San Antonio Regional Office
14250 Judson Road
San Antonio, Texas 78233-4480

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Frank Daniels. Frank Daniels 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 Frank Daniels 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, Frank Daniels's failure to comply is not a violation of this Order. Frank Daniels shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Frank Daniels shall notify the Executive Director within seven days after Frank Daniels 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 Frank Daniels shall be made in writing to the Executive Director. Extensions are not effective until Frank Daniels 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 Frank Daniels if the Executive Director determines that Frank Daniels 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.

Frank E. Daniels
Docket No. 2008-0597-MLM-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF JACQUELYN BOUTWELL

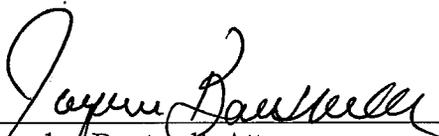
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Jacquelyn Boutwell. 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 Frank E. Daniels” (the “EDPRP”) was filed with the Office of the Chief Clerk on November 12, 2008.

The EDPRP was mailed to Frank Daniels at his last known address on November 12, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Frank Daniels received notice of the EDPRP on November 15, 2008, as evidenced by his signature on the card.

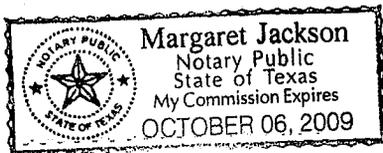
More than 20 days have elapsed since Frank Daniels received notice of the EDPRP. Frank Daniels failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.”

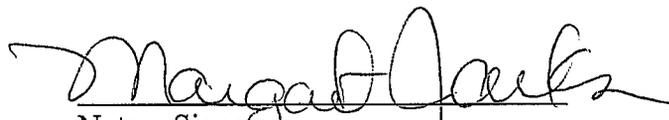


Jacquelyn Boutwell, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jacquelyn Boutwell, 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 2 day of February A.D., 2009.





Notary Signature