

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

**DOCKET NO.: 2008-1566-WR-E TCEQ ID: RN105575674 CASE NO.: 36601
RESPONDENT NAME: GULF, COLORADO & SAN SABA RAILWAY CORPORATION**

ORDER TYPE:		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	

CASE TYPE:		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER RIGHTS	<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

SITE WHERE VIOLATION(S) OCCURRED: Approximately four miles northwest of the City of Lometa, Lampassas County

TYPE OF OPERATION: An earthen embankment that serves as a railroad bridge.

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: A complaint was received alleging that a dam was created when trestles holding up a railroad bridge failed due to fire. There is no record of additional pending enforcement actions regarding this facility location

INTERESTED PARTIES: The complainant has not indicated a desire to protest this action or speak at agenda. No one other than the ED and the Respondent expressed an interest in this matter.

COMMENTS RECEIVED: The *Texas Register* comment period expired June 1, 2009. No comments were received.

CONTACTS AND MAILING LIST:

TCEQ Attorney: Mr. Jim Sallans, Litigation Division, MC 175, (512) 239-2053

Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

TCEQ Enforcement Coordinator: Ms. Evette Alvarado, Water Enforcement Section, MC 169, (512) 239-2573

TCEQ Regional Contact: Mr. Frank Bureson, Waco Region Office, MC R-9, (254) 761-3001

Respondent: Mr. Richard C. McClure, Gulf, Colorado & San Saba Railway Corporation, 22 E. Dundee Road, Suite 22, Barrington, Illinois 60010-7410

Respondent's Attorney: Not represented by counsel on this enforcement matter.

VIOLATION SUMMARY CHART:

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input 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: May 20, 2008</p> <p>Date of Investigation Relating to this Case: May 28, 2008</p> <p>Date of NOE Relating to this Case: October 29, 2008</p> <p>Background Facts: The EDPRP was filed on February 6, 2009, 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 9, 2009, as evidenced by the signature on the card. The Respondent 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>WR: Failed to obtain appropriate authorization prior to storing or diverting state water associated with the impoundment it created when it constructed an embankment to replace a railroad bridge over Cottonwood Branch [30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE § 11.121].</p>	<p>Total Assessed: \$2,000</p> <p>Total Deferred: \$0</p> <p><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: \$2,000</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>Ordering Provision:</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>Within 90 days, submit written notarized certification demonstrating that water rights have been or will be obtained either through a general authorization under 30 TEX. ADMIN. CODE § 297.11 or through a contractual permit under 30 TEX. ADMIN. CODE § 297.14, or that the diversion, storing impounding, taking, and/or use of state water has ceased until authorization is obtained.</p>



Policy Revision 2 (September 2002)

Penalty Calculation Worksheet (PCW)

PCW Revision June 12, 2008

DATES	Assigned	19-Sep-2008	Screening	29-Sep-2008	EPA Due	
	PCW	30-Dec-2008				

RESPONDENT/FACILITY INFORMATION	
Respondent	Gulf, Colorado & San Saba Railway Corporation
Reg. Ent. Ref. No.	RN105575674
Facility/Site Region	9-Waco
Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	36601	No. of Violations	1
Docket No.	2008-1566-WR-E	Order Type	1660
Media Program(s)	Water Rights	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Evette Alvarado
		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$5,000

Penalty Calculation Section	
TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1 <input type="text" value="\$2,000"/>
ADJUSTMENTS (+/-) TO SUBTOTAL 1	
<small>Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.</small>	
Compliance History	Subtotals 2, 3, & 7 <input type="text" value="\$0"/>
Notes	The Repondent has no compliance history.
Culpability	Subtotal 4 <input type="text" value="\$0"/>
Notes	The Respondent does not meet the culpability criteria.
Good Faith Effort to Comply Total Adjustments	Subtotal 5 <input type="text" value="\$0"/>
Economic Benefit	Subtotal 6 <input type="text" value="\$0"/>
Total EB Amounts	\$114
Approx. Cost of Compliance	\$2,500
<small>*Capped at the Total EB \$ Amount</small>	
SUM OF SUBTOTALS 1-7	Final Subtotal <input type="text" value="\$2,000"/>
OTHER FACTORS AS JUSTICE MAY REQUIRE	Adjustment <input type="text" value="\$0"/>
Notes	
Final Penalty Amount <input type="text" value="\$2,000"/>	
STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty <input type="text" value="\$2,000"/>
DEFERRAL	Adjustment <input type="text" value="\$0"/>
<small>Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)</small>	
Notes	Deferral not offered for non-expedited settlement.
PAYABLE PENALTY	<input type="text" value="\$2,000"/>

Screening Date 29-Sep-2008

Docket No. 2008-1566-WR-E

PCW

Respondent Gulf, Colorado & San Saba Railway Corporation

Policy Revision 2 (September 2002)

Case ID No. 36601

PCW Revision June 12, 2008

Reg. Ent. Reference No. RN105575674

Media [Statute] Water Rights

Enf. Coordinator Evette Alvarado

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%
<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)

>> Repeat Violator (Subtotal 3)

Adjustment Percentage (Subtotal 3)

>> Compliance History Person Classification (Subtotal 7)

Adjustment Percentage (Subtotal 7)

>> Compliance History Summary

Compliance History Notes

The Repondent has no compliance history.

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

Screening Date 29-Sep-2008	Docket No. 2008-1566-WR-E	PCW												
Respondent Gulf, Colorado & San Saba Railway Corporation	<small>Policy Revision 2 (September 2002)</small>													
Case ID No. 36601	<small>PCW Revision June 12, 2008</small>													
Reg. Ent. Reference No. RN105575674														
Media [Statute] Water Rights														
Enf. Coordinator Evette Alvarado														
Violation Number <input type="text" value="1"/>														
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 297.11 and Tex. Water Code § 11.121"/>													
Violation Description	<input type="text" value="Failed to obtain a water rights permit prior to diverting, storing, impounding, taking, or using water of the state, as documented during an investigation conducted May 28, 2008. The Respondent constructed a dam impounding greater than one acre-foot of water across Cottonwood Branch prior to obtaining a water rights permit."/>													
Base Penalty	<input type="text" value="\$5,000"/>													
>> Environmental, Property and Human Health Matrix														
OR	Harm													
	Release Major Moderate Minor													
	Actual <input type="text"/> <input type="text"/> <input type="text"/>	Percent <input type="text" value="0%"/>												
Potential <input type="text"/> <input type="text"/> <input type="text"/>														
>> Programmatic Matrix														
	Falsification Major Moderate Minor													
	<input type="text"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Percent <input type="text" value="10%"/>												
Matrix Notes	<input type="text" value="100% of the rule requirement was not met."/>													
Adjustment	<input type="text" value="\$4,500"/>													
<input type="text" value="\$500"/>														
Violation Events														
Number of Violation Events	<input type="text" value="4"/>	Number of violation days												
	<input type="text" value="124"/>													
<small>mark only one with an x</small>	<table border="1" style="margin-left: auto; margin-right: auto;"> <tr><td>daily</td><td><input type="text"/></td></tr> <tr><td>monthly</td><td><input checked="" type="checkbox"/></td></tr> <tr><td>quarterly</td><td><input type="text"/></td></tr> <tr><td>semiannual</td><td><input type="text"/></td></tr> <tr><td>annual</td><td><input type="text"/></td></tr> <tr><td>single event</td><td><input type="text"/></td></tr> </table>	daily	<input type="text"/>	monthly	<input checked="" type="checkbox"/>	quarterly	<input type="text"/>	semiannual	<input type="text"/>	annual	<input type="text"/>	single event	<input type="text"/>	Violation Base Penalty
daily	<input type="text"/>													
monthly	<input checked="" type="checkbox"/>													
quarterly	<input type="text"/>													
semiannual	<input type="text"/>													
annual	<input type="text"/>													
single event	<input type="text"/>													
		<input type="text" value="\$2,000"/>												
<input type="text" value="Four monthly events are recommended based on the investigation date of May 28, 2008, to the screening date of September 29, 2008."/>														
Good Faith Efforts to Comply	0.0% Reduction	\$0												
	<small>Before NOV NOV to EDPRP/Settlement Offer</small>													
Extraordinary	<input type="text"/>													
Ordinary	<input type="text"/>													
N/A	<input checked="" type="checkbox"/> (mark with x)													
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>													
Violation Subtotal	<input type="text" value="\$2,000"/>													
Economic Benefit (EB) for this violation														
Estimated EB Amount	<input type="text" value="\$114"/>													
Statutory Limit Test														
Violation Final Penalty Total	<input type="text" value="\$2,000"/>													
This violation Final Assessed Penalty (adjusted for limits)	<input type="text" value="\$2,000"/>													

Economic Benefit Worksheet

Respondent Gulf, Colorado & San Saba Railway Corporation

Case ID No. 36601

Reg. Ent. Reference No. RN105575674

Media Water Rights

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
<small>No commas or \$</small>							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$2,500	28-May-2008	27-Apr-2009	0.92	\$114	n/a	\$114
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare and submit an administratively correct water rights permit application. Date required is the date of the investigation. Final date is the expected date of compliance.

Avoided Costs

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

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,500

TOTAL

\$114

Compliance History Report

Customer/Respondent/Owner-Operator: CN603385386 Gulf, Colorado & San Saba Railway Corporation Classification: Rating:

Regulated Entity: RN105575674 MCCLURE DAM Classification: Site Rating:

ID Number(s):

Location: COTTONWOOD BRANCH APPROXIMATELY 4 MILES NORTHWEST OF LOMETA TX

TCEQ Region: REGION 09 - WACO

Date Compliance History Prepared: October 09, 2008

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: October 08, 2003 to October 08, 2008

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

Name: Evette Alvarado Phone: 239 - 2573

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? | <u> N/A </u> |
| 4. If Yes, who was/were the prior owner(s)? | <u> N/A </u> |
| 5. When did the change(s) in ownership occur? | <u> N/A </u> |

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
AGAINST GULF, COLORADO &
SAN SABA RAILWAY
CORPORATION;
RN105575674

§
§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2008-1566-WR-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. 11 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 Gulf, Colorado, & San Saba Railway Corporation ("GCSR").

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

FINDINGS OF FACT

1. GCSR owns property that includes an earthen embankment that serves as a railroad bridge. The embankment impounds water of Cottonwood Branch, a tributary of the Colorado River. It is located approximately four miles northwest of the City of Lometa, in Lampassas County Texas (the "Site").
2. GCSR's Site adjoins, is contiguous with or surrounds state water as defined in TEX. WATER CODE § 11.021.
3. During an inspection on May 28, 2008, a TCEQ Waco Regional Office investigator documented that GCSR failed to obtain appropriate authorization prior to storing or diverting approximately 450 acre feet of state water associated with the impoundment it created when it constructed an embankment to replace a railroad bridge over Cottonwood Branch.
4. GCSR received notice of the violation on or about November 3, 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 Gulf, Colorado & San Saba Railway Corporation" (the "EDPRP") in the TCEQ Chief Clerk's office on February 6, 2009.
6. By letter dated February 6, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served GCSR with notice of the EDPRP. According to the return receipt "green card," the Respondent received notice of the EDPRP on February 9, 2009, as evidenced by the signature on the card.
7. More than 20 days have elapsed since GCSR received notice of the EDPRP, provided by the Executive Director. GCSR 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, GCSR is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 11 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, GCSR, failed to obtain appropriate authorization prior to storing or diverting state water associated with the impoundment it created when it constructed an embankment to replace a railroad bridge over Cottonwood Branch, in violation of 30 TEX. ADMIN. CODE § 297.11 and TEX. WATER CODE § 11.121
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served GCSR with proper notice of the EDPRP, as required by TEX. WATER CODE § 11.0842 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, GCSR has failed to file a timely answer to the EDPRP, as required by TEX. WATER CODE § 11.0842 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 11.0842 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against GCSR and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 11.0842, the Commission has the authority to assess an administrative penalty against GCSR 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 two thousand dollars (\$2,000.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 11.0842.
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. GCSR is assessed an administrative penalty in the amount of two thousand dollars (\$2,000.00) for violations of TEX. WATER CODE ch. 11 and rules of the TCEQ. The payment of this administrative penalty and GCSR'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: Gulf, Colorado, & San Saba Railway Corporation; Docket No. 2008-1566-WR-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. GCSR shall undertake the following technical requirements:
 - a. Within 90 days of the effective date of the Commission Order, GCSR shall submit written certification to demonstrate that: water rights have been or will be obtained either through a general authorization under 30 TEX. ADMIN. CODE § 297.11 or through a contractual permit under 30 TEX. ADMIN. CODE § 297.14; or that the diversion, storing impounding, taking, and/or use of state water has ceased until

authorization is obtained. The Certification shall demonstrate compliance, be notarized by a State of Texas Notary Public and include the following 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."

GCSR shall submit copies of documentation necessary to demonstrate compliance with these Ordering Provisions to:

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

and

Water Section Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Avenue, Suite 2500
Waco, Texas 76710-7826

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

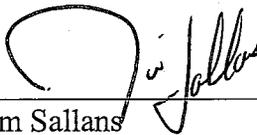
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Jim Sallans. 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 Gulf, Colorado & San Saba Railway Corporation” (the “EDPRP”) with the Office of the Chief Clerk on February 6, 2009.

I sent the EDPRP to Mr. Richard McClure, principle at Gulf, Colorado and San Saba Railway, at its last known address on February 6, 2009, 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 9, 2009, as evidence by the signature on the card.

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



Jim Sallans
Attorney
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 26th day of MARCH, A.D., 2009.



Notary Signature

