

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO.: 2008-0567-MLM-E TCEQ ID: RN105152904 CASE NO.: 35677

RESPONDENT NAME: KERMIT WILLET

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 checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: Flowing Wells Subdivision, Section 1, one mile southeast of earthen dam, approximately 150 feet north of Farm-to-Market Road 1127, adjacent to slough area near Shepherd, San Jacinto County.

TYPE OF OPERATION: Unauthorized disposal site

SMALL BUSINESS: Yes No

OTHER SIGNIFICANT MATTERS: Two complaints were received alleging that the Respondent was burning batteries. There is no record of additional pending enforcement actions regarding this site.

INTERESTED PARTIES: The complainants have not expressed a desire to protest this enforcement action or speak at Agenda. 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 December 29, 2008. No comments were received.

CONTACTS AND MAILING LIST:

- TCEQ Attorney:** Mr. Benjamin O. Thompson, Litigation Division, MC 175, (512) 239-1297
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
- TCEQ Enforcement Coordinator:** Mr. Ross Fife, Waste Enforcement Section, MC 128, (512) 239-2541
- TCEQ Regional Contact:** Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 899-8705
- Respondent:** Mr. Kermit Willett, 1313 Farm-to-Market Road 1486, Anderson, Texas 77830
- 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: November 3, 2006 and February 20, 2007</p> <p>Date of Investigation Relating to this Case: January 25, 2008</p> <p>Date of NOE Relating to this Case: March 5, 2008</p> <p>Background Facts: The EDPRP was filed on August 1, 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 August 5, 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: The Respondent has not come into compliance.</p> <p>MLM:</p> <p>1. Failed to prevent the unauthorized disposal of municipal hazardous waste, in violation of [30 TEX. ADMIN. CODE § 335.4].</p> <p>2. 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).</p>	<p>Total Assessed: \$2,290</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: \$2,290</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 proposed 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 Provisions:</p> <p>The Respondent shall undertake the following technical requirements:</p> <p>1. Immediately, cease accepting and/or disposing of any additional waste and all unauthorized burning at the Site.</p> <p>2. Within 30 days:</p> <p>a. Ensure that all unauthorized waste, including burned material, at the Site is removed and properly disposed of at an authorized facility; and</p> <p>b. Determine the extent of contamination to the area at the Site and ensure that the area is properly remediated.</p> <p>3. Within 45 days, submit documentation necessary to demonstrate compliance with these Ordering Provisions.</p>



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision February 29, 2008

DATES	Assigned	10-Mar-2008	Screening	27-Mar-2008	EPA Due	
	PCW	10-Jun-2008				

RESPONDENT/FACILITY INFORMATION			
Respondent	Kermit Willett		
Reg. Ent. Ref. No.	RN105152904		
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor

CASE INFORMATION				
Enf./Case ID No.	35677	No. of Violations	2	
Docket No.	2008-0567-MLM-E	Order Type	1660	
Media Program(s)	Industrial and Hazardous Waste	Enf. Coordinator	Ross Fife	
Multi-Media	Air	EC's Team	Enforcement Team 7	
Admin. Penalty \$	Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties) **Subtotal 1**

ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History Enhancement **Subtotals 2, 3, & 7**

Notes: There was one NOV received for same or similar violations and one NOV for dissimilar violations.

Culpability Enhancement **Subtotal 4**

Notes: The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Reduction **Subtotal 5**

	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 **Subtotal 6**
 *Capped at the Total EB \$ Amount
Approx. Cost of Compliance

SUM OF SUBTOTALS 1-7 **Final Subtotal**

OTHER FACTORS AS JUSTICE MAY REQUIRE **Adjustment**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes: Recommended adjustment to capture the avoided cost associated with violation #2.

Final Penalty Amount

STATUTORY LIMIT ADJUSTMENT **Final Assessed Penalty**

DEFERRAL Reduction **Adjustment**

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

Screening Date 27-Mar-2008

Docket No. 2008-0567-MLM-E

PCW

Respondent Kermit Willett

Policy Revision 2 (September 2002)

Case ID No. 35677

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN105152904

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Ross Fife

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	1	2%
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 judgments 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

There was one NOV received for same or similar violations and one NOV for dissimilar violations.

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

Screening Date 27-Mar-2008 **Docket No.** 2008-0567-MLM-E **PCW**
Respondent Kermit Willett *Policy Revision 2 (September 2002)*
Case ID No. 35677 *PCW Revision February 29, 2008*
Reg. Ent. Reference No. RN105152904
Media [Statute] Industrial and Hazardous Waste
Enf. Coordinator Ross Fife
Violation Number
Rule Cite(s)
Violation Description
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="x"/>	<input type="text" value="10%"/>
Potential	<input type="text"/>	<input type="text"/>	<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

Adjustment

Violation Events

Number of Violation Events Number of violation days

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

Violation Base Penalty

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 Kermit Willett
Case ID No. 35677
Reg. Ent. Reference No. RN105152904
Media Industrial and Hazardous Waste
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
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	\$2,000	25-Jan-2008	24-Nov-2008	0.8	\$83	n/a	\$83
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to ensure that waste is disposed of at an authorized facility and the area is properly remediated.
 Date Required is the investigation date and Final Date is the expected date of compliance.

Avoided Costs

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

Disposal				0.0	\$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

\$2,000

TOTAL

\$83

Screening Date 27-Mar-2008

Docket No. 2008-0567-MLM-E

PCW

Respondent Kermit Willett

Policy Revision 2 (September 2002)

Case ID No. 35677

PCW Revision February 29, 2008

Reg. Ent. Reference No. RN105152904

Media [Statute] Industrial and Hazardous Waste

Enf. Coordinator Ross Fife

Violation Number

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 January 25, 2008. Specifically, two automotive batteries, plastic 1-liter bottles, tin and aluminum cans, corrugated metal, and paper wrappings and bags were burned in an approximately 4 feet in length by 5 feet in width area.

Base Penalty

>> Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text"/>	<input type="text"/>	<input checked="" type="text" value="x"/>	<input type="text" value="10%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> Programmatic Matrix

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

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 result of this violation.

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

Violation Base Penalty

One single event is recommended.

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 Kermit Willett
Case ID No. 35677
Reg. Ent. Reference No. RN105152904
Media Industrial and Hazardous 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
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No commas or \$

Delayed Costs

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

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]	\$150	25-Jan-2008	25-Jan-2008	0.0	\$0	\$150	\$150
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to properly dispose of waste and ensure that unauthorized burning does not occur at the site. The date of the investigation is Date Required and Final Date.

Approx. Cost of Compliance \$150

TOTAL \$150

Compliance History

Customer/Respondent/Owner-Operator:	CN603179706 WILLETT, KERMIT	Classification: AVERAGE	Rating: 4.00
Regulated Entity:	RN105152904 FLOWING WELLS SUBDIVISION SECTION 1	Classification: AVERAGE	Site Rating: 4.00
ID Number(s):			
Location:	FLOWING WELLS SUBDIVISION, SECTION 1 S SE OF EARTHEN DAM APPROX. 150 FT N OF FM 1127 NEAR SLOUGH AREA; SAN JACINTO COUNTY, TEXAS	Rating Date: 9/1/2007	Repeat Violator: NO
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	April 07, 2008		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 27, 2003 to March 27, 2008		

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

Name: Dana Shuler Phone: (512) 239-2505

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 03/05/2008 (616062)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 01/29/2007 (533370)
 - Self Report? NO Classification: Minor
 - Citation: 30 TAC Chapter 330, SubChapter A 330.15
 - Description: Failure to prevent the storage, disposal and transfer of municipal solid waste at an unregistered facility.
 - Date: 06/26/2007 (558787)
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter A 330.15
30 TAC Chapter 335, SubChapter A 335.4
 - Description: Failure to prevent the disposal of municipal hazardous waste at an unauthorized 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
ENFORCEMENT ACTION
CONCERNING
KERMIT WILLETT,
RN105152904**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

DEFAULT ORDER DOCKET NO. 2008-0567-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 chs. 382 and 361, 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 Kermit Willett ("Mr. Willett").

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

FINDINGS OF FACT

1. Mr. Willett operates an unauthorized disposal and burn site at Flowing Wells Subdivision, Section 1, one mile southeast of earthen dam, approximately 150 feet north of Farm-to-Market Road 1127, adjacent to slough area near Shepherd, San Jacinto County, Texas (the "Site").
2. The Site consists of one or more sources as defined in TEX. HEALTH & SAFETY CODE § 382.003(12) and involves or involved the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an inspection on January 25, 2008, a TCEQ Beaumont Regional Office investigator documented that Mr. Willett:
 - a. Failed to prevent the unauthorized disposal of municipal hazardous waste. Specifically, Mr. Willett disposed of two automotive batteries on the ground and burned them in an area approximately four feet in length by five feet in width. It was documented that the waste tested had a Toxicity Characteristic Leaching Procedure (TCLP) concentration level of 1300 milligrams per liter (mg/L) for lead.

- b. Failed to comply with the prohibition on outdoor burning. Specifically, two automotive batteries, plastic 1-liter bottles, tin and aluminum cans, corrugated metal, and paper wrappings and bags were burned in an approximately four feet in length by five feet in width area.
4. Mr. Willett received notice of the violations on or about March 10, 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 Kermit Willett" (the "EDPRP") in the TCEQ Chief Clerk's office on August 1, 2008.
6. By letter dated August 1, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Willett with notice of the EDPRP. According to the return receipt "green card," Mr. Willett received notice of the EDPRP on August 5, 2008, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Mr. Willett received notice of the EDPRP, provided by the Executive Director. Mr. Willett 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. Willett 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. Willett Failed to prevent the unauthorized disposal of municipal hazardous waste, in violation of 30 TEX. ADMIN. CODE § 335.4.
3. As evidenced by Finding of Fact No. 3.b., Mr. Willett 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).
4. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director has timely served Mr. Willett 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. Willett has 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. Willett 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. Willett 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 two thousand two hundred ninety dollars (\$2,290.00) 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. Willett is assessed an administrative penalty in the amount of two thousand two hundred ninety dollars (\$2,290.00) for violations of TEX. HEALTH & SAFETY CODE chs. 361 and 382, and rules of the TCEQ. The payment of this administrative penalty and Mr. Willett'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: Kermit Willett; Docket No. 2008-0567-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. Willett shall undertake the following technical requirements:

- a. Immediately after the effective date of this Order, Mr. Willett shall cease accepting and/or disposing of any additional waste and all unauthorized burning at the Site.
- b. Within 30 days after the effective date of this Order, Mr. Willett shall:
 - i. Ensure that all unauthorized waste, including burned material, at the Site is removed and properly disposed of at an authorized facility; and
 - ii. Determine the extent of contamination to the area at the Site and ensure that the area is properly remediated.
- c. Within 45 days after the effective date of this Order, Mr. Willett 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

Derek Eades, Waste Section Manager
Texas Commission on Environmental Quality
Beaumont Regional Office
3870 Eastex Freeway
Beaumont, Texas 77703-1830

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 violation.

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

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Benjamin O. Thompson. 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 Kermit Willett” (the “EDPRP”) with the Office of the Chief Clerk on August 1, 2008.

I sent the EDPRP to Mr. Willett at his last known address on August 1, 2008 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt “green card,” Mr. Willett received notice of the EDPRP on August 5, 2008, as evidenced by the signature on the card.

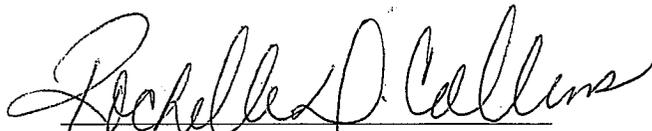
More than 20 days have elapsed since Mr. Willett received notice of the EDPRP. Mr. Willett failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference”.



Benjamin O. Thompson
Attorney
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Benjamin O. Thompson, 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 30th day of October, A.D., 2008.


Notary Signature

Notary Stamp

