

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**

**DOCKET NO.: 2006-0992-DCL-E    TCEQ ID: RN104029194    CASE NO.: 30273**

**RESPONDENT NAME: JAMES C. DUNN, JR. DBA FILLMORE CLEANERS**

<b>ORDER TYPE:</b>		
<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	

<b>CASE TYPE:</b>		
<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 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 checked="" type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 619 North Fillmore Street, Amarillo, Potter County

**TYPE OF OPERATION:** Dry cleaning facility

**SMALL BUSINESS:**     Yes     No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired August 10, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Tommy Tucker Henson II, Litigation Division, MC 175, (512) 239-0946  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Mr. Thomas Greimel, Waste Enforcement Section, MC 128, (512) 239-5690

**TCEQ Regional Contact:** Mr. Eddy Vance, Amarillo Regional Office, MC R-1, (806) 468-0510

**Respondent:** Mr. James C. Dunn, Jr., Owner, Fillmore Cleaners, 619 North Fillmore Street, Amarillo, Texas 79107

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

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> None</p> <p><b>Dates of Investigation Relating to this Case:</b> June 14, 2006, and May 31, 2007</p> <p><b>Date of NOE Relating to this Case:</b> July 13, 2006</p> <p><b>Background Facts:</b> The case was referred to the Litigation Division February 27, 2007. The EDRP was filed June 15, 2007, and re-filed for service May 7, 2008. Additional violation events were added, and an EDFARP was filed December 19, 2008; service was not achieved. The EDFARP was hand-delivered by TCEQ Amarillo Regional Staff to the Respondent on February 10, 2009, and May 19, 2009. The Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> Not yet in compliance. The Respondent owes \$317 in past-due fees.</p> <p><b>DCL:</b></p> <ol style="list-style-type: none"> <li>Failed to renew the Facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station for the period beginning September 1, 2005, through April 26, 2006 [30 TEX. ADMIN. CODE § 337.11(e) and TEX. HEALTH &amp; SAFETY CODE § 374.102].</li> <li>Failed to renew the Facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station for the period beginning April 26, 2006, through May 31, 2007 [30 TEX. ADMIN. CODE § 337.11(e) and TEX. HEALTH &amp; SAFETY CODE § 374.102].</li> <li>Failed to pay outstanding dry cleaner and late fees for TCEQ Financial Account No. 24001447 for fiscal year 2006 [30 TEX. ADMIN. CODE § 337.14(c) and TEX. WATER CODE § 5.702].</li> </ol>	<p><b>Total Assessed:</b> \$3,185</p> <p><b>Total Deferred:</b> \$0</p> <p><input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$3,185</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><b>Site Compliance History Classification</b> N/A</p> <p><b>Person Compliance History Classification</b> N/A</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>Within 15 days, complete and submit the required dry cleaning facility registration form.</li> <li>Within 30 days, submit payment for all outstanding fees.</li> <li>Within 45 days, submit written certification demonstrating compliance.</li> </ol>



**Penalty Calculation Worksheet (PCW)**

Policy Revision 2 (September 2002)

PCW Revision May 19, 2005

<b>DATES</b>	Assigned	17-Jul-2006	Screening	18-Jul-2006	EPA Due	
	PCW	10-Dec-2008				

<b>RESPONDENT/FACILITY INFORMATION</b>			
Respondent	James C. Dunn, Jr. dba Fillmore Cleaners		
Reg. Ent. Ref. No.	RN104029194		
Facility/Site Region	1-Amarillo	Major/Minor Source	Minor Source

<b>CASE INFORMATION</b>			
Enf./Case ID No.	30273	No. of Violations	3
Docket No.	2006-0992-DCL-E	Order Type	1660
Media Program(s)	Drycleaner	Enf. Coordinator	Thomas Greimel
Multi-Media		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$50

**Penalty Calculation Section**

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 \$3,185

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

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

**Compliance History** 0% Enhancement Subtotals 2, 3, & 7 \$0

Notes: No adjustment for compliance history.

**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 a small x)

Notes: The respondent does not meet the good faith criteria.

**Economic Benefit** 0% Enhancement\* Subtotal 6 \$0

Total EB Amounts	\$46	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$500	

**SUM OF SUBTOTALS 1-7** Final Subtotal \$3,185

**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** \$3,185

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty \$3,185

**DEFERRAL** 0% Reduction Adjustment \$0

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

Notes: This is not an expedited case.

**PAYABLE PENALTY** \$3,185

Order 4-James C. Dunn, Jr. dba Fillmore Cleaners, opw  
**Screening Date** 18-Jul-2006 **Docket No.** 2006-0992-DCL-E **PCW**  
**Respondent** James C. Dunn, Jr. dba Fillmore Cleaners *Policy Revision 2 (September 2002)*  
**Case ID No.** 30273 *PCW Revision May 19, 2005*  
**Reg. Ent. Reference No.** RN104029194  
**Media [Statute]** Drycleaner  
**Enf. Coordinator** Thomas Greimel

**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>	0	0%
	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 judgements 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)</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%
Other	<i>Please Enter Yes or No</i>		
	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)** 0%

>> **Repeat Violator (Subtotal 3)**

No <

**Adjustment Percentage (Subtotal 3)** 0%

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

N/A <

**Adjustment Percentage (Subtotal 7)** 0%

>> **Compliance History Summary**

Compliance History Notes: No adjustment for compliance history.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 0%

Order4-James C Dunn, Jr dba Fillmore Cleaners.qpw

Screening Date 18-Jul-2006 Docket No. 2006-0992-DCL-E

PCW

Respondent James C. Dunn, Jr. dba Fillmore Cleaners

Policy Revision 2 (September 2002)

Case ID No. 30273

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN104029194

Media [Statute] Drycleaner

Enf. Coordinator Thomas Greimel

Violation Number 1

Primary Rule Cite(s) 30 Tex. Admin. Code § 337.11(e)

Secondary Rule Cite(s) Tex. Health & Safety Code § 374.102

Violation Description The respondent failed to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility.

Base Penalty \$50

>> Environmental, Property and Human Health Matrix

		Harm			Percent
OR	Release	Major	Moderate	Minor	
	Actual				
	Potential				

>> Programmatic Matrix

		Falsification	Major	Moderate	Minor	Percent
			X			

Matrix Notes 100% of the rule requirement was not met.

Adjustment -\$45

Base Penalty Subtotal \$5

Violation Events

Number of Violation Events 237

	daily	X
	monthly	
mark only one	quarterly	
use a small x	semiannual	
	annual	
	single event	

Violation Base Penalty \$1,185

Two hundred thirty-seven daily events are recommended from the September 1, 2005 deadline to the April 26, 2006 deadline established by the TCEQ letter dated March 24, 2006.

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$29

Violation Final Penalty Total \$1,185

This violation Final Assessed Penalty (adjusted for limits) \$1,185

Order 4 - James C. Dunn, Jr. dba Fillmore Cleaners.qpw

### Economic Benefit Worksheet

**Respondent** James C. Dunn, Jr. dba Fillmore Cleaners  
**Case ID No.** 30273  
**Reg. Ent. Reference No.** RN104029194  
**Media [Statute]** Drycleaner  
**Violation No.** 1

<b>Percent Interest</b>	<b>Years of Depreciation</b>
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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	01-Sep-2005	31-Dec-2007	2.3	\$29	n/a	\$29
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: The estimated cost to register a dry cleaning or drop station facility annually. The date required is the date that the completed registration form was due and the final date is the date the respondent is projected to come into compliance.

Item Description	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

**TOTAL**

Order 4 - James C. Dunn, Jr. dba Fillmore Cleaners.gpw  
**Screening Date** 18-Jul-2006 **Docket No.** 2006-0992-DCL-E **PCW**

**Respondent** James C. Dunn, Jr. dba Fillmore Cleaners *Policy Revision 2 (September 2002)*  
**Case ID No.** 30273 *PCW Revision May 19, 2005*

**Reg. Ent. Reference No.** RN104029194  
**Media [Statute]** Drycleaner  
**Enf. Coordinator** Thomas Greimel  
**Violation Number**   
**Primary Rule Cite(s)**   
**Secondary Rule Cite(s)**   
**Violation Description**   
**Base Penalty**

>> **Environmental, Property and Human Health Matrix**

Release	Harm			Percent
	Major	Moderate	Minor	
Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

>> **Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="10%"/>

**Matrix Notes**

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**

<i>mark only one use a small x</i>	daily	<input checked="" type="checkbox"/>
	monthly	<input type="checkbox"/>
	quarterly	<input type="checkbox"/>
	semiannual	<input type="checkbox"/>
	annual	<input type="checkbox"/>
	single event	<input type="checkbox"/>

**Violation Base Penalty**

Four hundred daily events are recommended from the April 26, 2006 deadline established by the TCEQ letter dated March 24, 2006 to the May 31, 2007 overdue fees record review date.

Economic Benefit (EB) for this violation	Statutory Limit Test
<b>Estimated EB Amount</b> <input type="text" value="\$17"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$2,000"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$2,000"/>	

### Economic Benefit Worksheet

Respondent James C. Dunn, Jr. dba Fillmore Cleaners  
 Case ID No. 30273  
 Reg. Ent. Reference No. RN104029194  
 Media [Statute] Drycleaner  
 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
<b>Delayed Costs</b>							
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	01-Sep-2006	31-Dec-2007	1.3	\$17	n/a	\$17
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs: The estimated cost to register a dry cleaning or drop station facility annually. The date required is the date that the completed registration form was due and the final date is the date the respondent is projected to come into compliance.

Item	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

TOTAL

Order 4 - James C. Dunn, Jr. dba Fillmore Cleaners.qpw  
**Screening Date** 18-Jul-2006 **Docket No.** 2006-0992-DCL-E **PCW**

**Respondent** James C. Dunn, Jr. dba Fillmore Cleaners *Policy Revision 2 (September 2002)*  
**Case ID No.** 30273 *PCW Revision May 19, 2005*

**Reg. Ent. Reference No.** RN104029194

**Media [Statute]** Drycleaner

**Enf. Coordinator** Thomas Greimel

**Violation Number** 3

**Primary Rule Cite(s)** 30 Tex. Admin. Code § 337.14(c)

**Secondary Rule Cite(s)** Tex. Water Code § 5.702

**Violation Description** Failed to pay outstanding dry cleaner and late fees for TCEQ Financial Account No. 24001447 for fiscal year 2006, as documented during a record review conducted on May 31, 2007.

**Base Penalty** \$50

>> **Environmental, Property and Human Health Matrix**

		Harm			
Release		Major	Moderate	Minor	
OR	Actual				Percent
	Potential				

>> **Programmatic Matrix**

		Major	Moderate	Minor	
Falsification					Percent
Matrix Notes					

**Adjustment** -\$50

**Base Penalty Subtotal** \$0

**Violation Events**

**Number of Violation Events**

mark only one use a small x	daily	
	monthly	
	quarterly	
	semiannual	
	annual	
single event		

**Violation Base Penalty** \$0

No additional administrative penalty was calculated for this violation as penalties and interest will be assessed on the next fee billing.

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$0

**Violation Final Penalty Total** \$0

**This violation Final Assessed Penalty (adjusted for limits)** \$0

**Economic Benefit Worksheet**

Respondent James C. Dunn, Jr. dba Fillmore Cleaners  
 Case ID No. 30273  
 Reg. Ent. Reference No. RN104029194  
 Media [Statute] Drycleaner  
 Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
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: N/A

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  TOTAL

## Compliance History

Customer/Respondent/Owner-Operator:	CN602505646      DUNN, JAMES C JR	Classification:	Rating:
Regulated Entity:	RN104029194      FILLMORE CLEANERS	Classification:	Site Rating:
ID Number(s):	INDUSTRIAL AND HAZARDOUS WASTE      EPA ID		TXR000073692
	DISPOSAL		
Location:	619 N FILLMORE ST, AMARILLO, TX, 79107		
TCEQ Region:	REGION 01 - AMARILLO		
Date Compliance History Prepared:	July 17, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	July 17, 2001 to July 17, 2006		

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

Name: Thomas Greimel Phone: (512) 239-5690

### 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.)  
1 07/14/2006 (482867)
  - 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  
CONCERNING  
JAMES C. DUNN DBA FILLMORE  
CLEANERS;  
RN104029194

§  
§  
§  
§  
§  
§

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**DEFAULT ORDER**  
**DOCKET NO. 2006-0992-DCL-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 chs. 5 and 7, TEX. HEALTH & SAFETY CODE ch. 374, 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 James C. Dunn dba Fillmore Cleaners ("Mr. Dunn").

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

**FINDINGS OF FACT**

1. Mr. Dunn owns, in accordance with TEX. HEALTH & SAFETY CODE § 374.001(12), and operates a dry cleaning facility located at 619 North Fillmore Street, Amarillo, Potter County, Texas (the "Facility").
2. The Facility is a retail commercial establishment that operates in whole or in part for the purpose of cleaning garments or other fabrics using a process that involves any use of dry cleaning solvents. As such, the Facility is a dry cleaning facility as defined in TEX. HEALTH & SAFETY CODE § 374.001(7).
3. During record reviews conducted June 14, 2006, and May 31, 2007, a TCEQ Amarillo Regional Office investigator documented that Mr. Dunn:
  - a. Failed to renew the Facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; and
  - b. Failed to pay outstanding dry cleaner and late fees for TCEQ Financial Account No. 24001447 for fiscal year 2006.

4. Mr. Dunn received notice of the violations on or about July 18, 2006.
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 James C. Dunn, Jr. dba Fillmore Cleaners" (the "EDPRP") in the TCEQ Chief Clerk's office on June 15, 2007 and May 7, 2008.
6. By letter dated June 15, 2007, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director attempted to serve Mr. Dunn with notice of the EDPRP. The status of this letter is unknown.
7. By letter dated May 7, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Dunn with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail on May 7, 2008 as "unclaimed." The first class mail has not been returned, indicating that Mr. Dunn received notice of the EDPRP.
8. More than 20 days have elapsed since Mr. Dunn received notice of the EDPRP, provided by the Executive Director. Mr. Dunn failed to file an answer to the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.
9. 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 James C. Dunn, Jr. dba Fillmore Cleaners" (the "EDFARP") in the TCEQ Chief Clerk's office on December 19, 2008 and May 19, 2009.
10. By letters dated December 19, 2008, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director attempted to serve Mr. Dunn with notice of the EDPRP. The status of this letter is unknown.
11. By letter dated May 19, 2009, hand delivered to Mr. Dunn on May 26, 2009 by Jarrod Dunavin of the TCEQ Amarillo Region, the Executive Director served Mr. Dunn with notice of the EDFARP.
12. More than 20 days have elapsed since Mr. Dunn received notice of the EDFARP, provided by the Executive Director. Mr. Dunn failed to file an answer to 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. Dunn is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 5 and 7, TEX. HEALTH & SAFETY CODE ch. 374 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3.a., Mr. Dunn failed to renew the Facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility, in violation of 30 TEX. ADMIN. CODE § 337.11(e) and TEX. HEALTH & SAFETY CODE § 374.102.
3. As evidenced by Finding of Fact No. 3.b., Mr. Dunn failed to pay outstanding dry cleaner and late fees for TCEQ Financial Account No. 24001447 for fiscal year 2006, in violation of 30 TEX. ADMIN. CODE § 337.14(c) and TEX. WATER CODE § 5.702.
4. As evidenced by Finding of Fact Nos. 5, 6 and 7, the Executive Director timely served Mr. Dunn with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
5. As evidenced by Finding of Fact No. 8, Mr. Dunn failed to file a timely answer 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. Dunn and assess the penalty recommended by the Executive Director.
6. As evidenced by Finding of Fact Nos. 9, 10 and 11, the Executive Director timely served Mr. Dunn with proper notice of the EDFARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
7. As evidenced by Finding of Fact No. 12, Mr. Dunn failed to file a timely answer 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. Dunn and assess the penalty recommended by the Executive Director.
8. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Dunn 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.
9. An administrative penalty in the amount of three thousand one hundred eighty-five dollars (\$3,185.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE §§ 7.053 and 7.0525(c).

10. 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. Dunn is assessed an administrative penalty in the amount of three thousand one hundred eighty-five dollars (\$3,185.00) for violations of the Texas Water Code, the Texas Health and Safety Code, and the rules of the TCEQ. The payment of this administrative penalty and Mr. Dunn'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: James C. Dunn, Jr. dba Fillmore Cleaners; Docket No. 2006-0992-DCL-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. Dunn shall undertake the following technical requirements:
  - a. With 15 days after the effective date of this Order, Mr. Dunn shall complete and submit the required dry cleaning facility registration form for the Facility, in accordance with 30 TEX. ADMIN. CODE ch. 337 to:

Dry Cleaning Registration Team  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- b. Within 30 days after the effective date of this Order, Mr. Dunn shall submit payment for all outstanding fees, including any associated penalties and interest and with the

notation "James C. Dunn, Jr. dba Fillmore Cleaners — Account number 24001447"  
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

- c. Within 45 days after the effective date of this Order, Mr. Dunn shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision Nos. 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."

Mr. Dunn shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision Nos. 2.a. and 2.b. 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:

Eddy Vance, Waste Section Manager  
Texas Commission on Environmental Quality  
Amarillo Regional Office  
3918 Canyon Drive  
Amarillo, Texas 79109-4933

3. All relief not expressly granted in this Order is denied.

4. The provisions of this Order shall apply to and be binding upon Mr. Dunn. Mr. Dunn is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If Mr. Dunn 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. Dunn's failure to comply is not a violation of this Order. Mr. Dunn shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Mr. Dunn shall notify the Executive Director within seven days after Mr. Dunn 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. Dunn shall be made in writing to the Executive Director. Extensions are not effective until Mr. Dunn 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. Dunn if the Executive Director determines that Mr. Dunn 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.

James C. Dunn, Jr. dba Fillmore Cleaners  
Docket No. 2006-0992-DCL-E  
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## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF TOMMY TUCKER HENSON II**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

“My name is Tommy Tucker Henson II. 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 James C. Dunn, Jr. dba Fillmore Cleaners” (the “EDPRP”) was filed with the Office of the Chief Clerk on June 15, 2007 and May 8, 2008.

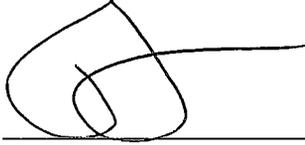
The EDPRP was mailed to Mr. Dunn at his last known address on June 15, 2007 and May 8, 2008, via certified mail, return receipt requested, and via first class mail, postage prepaid. The status of the letter mailed on June 15, 2007 is unknown. The United States Postal Service returned the wrapper sent by certified mail on May 8, 2008 as “unclaimed.” The first class mail has not been returned, indicating that Mr. Dunn received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, 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 James C. Dunn, Jr. dba Fillmore Cleaners” (the “EDFARP”) was filed with the Office of the Chief Clerk on December 18, 2008 and May 19, 2009.

The EDFARP was mailed to Mr. Dunn at his last known address on December 18, 2008 and January 20, 2009, via certified mail, return receipt requested, and via first class mail, postage prepaid. The status of these letters is unknown. The EDFARP was hand delivered to Mr. Dunn on May 26, 2009.

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



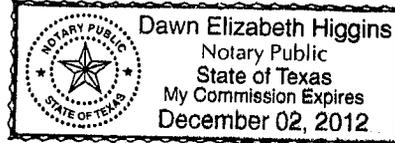
Tommy Tucker Henson II, Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Tommy Tucker Henson II, 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 22nd day of June, A.D., 2009.



Notary Signature



NOTARY WITHOUT BOND