

EXECUTIVE SUMMARY - ENFORCEMENT MATTER
DOCKET NO. 2009-0574-MSW-E TCEQ ID RN105701239 CASE NO. 37496
RESPONDENT NAME: GERALD LOWREY

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 type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input checked="" type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

SITE WHERE VIOLATION(S) OCCURRED: 1242 Farm Road 1510, Brookston, Lamar County

TYPE OF OPERATION: Unauthorized municipal solid waste disposal site

SMALL BUSINESS: Yes No N/A

OTHER SIGNIFICANT MATTERS: A complaint was received alleging mosquito vectors associated with scrap tires at the site and concern over the impact of fire fighting run-off from a fire at the Site on January 2, 2009, involving approximately 200-300 tires. 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 December 21, 2009. No comments were received.

CONTACTS AND MAILING LIST:

- TCEQ Attorney:** Ms. Sharesa Y. Alexander, Litigation Division, MC 175, (512) 239-3503
 Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019
- TCEQ Enforcement Coordinator:** Ms. Danielle Porras, Waste Enforcement Section, MC 128, (512) 239-2602
- TCEQ Regional Contact:** Mr. Michael Brashear, Tyler Regional Office, MC R-5, (903) 535-5176
- Respondent:** Mr. Gerald Lowrey, 1242 Farm Road 1510, Brookston, Texas 75421
- 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: January 25, 2009</p> <p>Date of Investigation Relating to this Case: March 10, 2009</p> <p>Date of NOE Relating to this Case: June 2, 2009</p> <p>Background Facts: The EDPRP was filed on August 31, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. The wrapper sent by certified mail was returned "unclaimed." The first class mail has not been returned. The Respondent 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 yet submitted documentation to certify compliance with the technical requirements.</p> <p>MSW: Failed to prevent the unauthorized disposal of municipal solid waste [30 TEX. ADMIN. CODE § 330.15(c)].</p>	<p>Total Assessed: \$2,500</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: \$2,500</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p>Site Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Person Compliance History Classification: <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p>Major Source: <input checked="" type="checkbox"/> Yes <input 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> <ol style="list-style-type: none"> 1. Immediately cease disposing of any additional municipal solid waste at the Site. 2. Within 30 days, remove all municipal solid waste to an authorized facility. 3. Within 45 days, submit written certification to demonstrate compliance with Ordering Provisions Nos. 1 and 2.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	6-Apr-2009	Screening	22-Apr-2009	EPA Due	
	PCW	7-Aug-2009				

RESPONDENT/FACILITY INFORMATION			
Respondent	Gerald Lowrey		
Reg. Ent. Ref. No.	RN105701239		
Facility/Site Region	5-Tyler	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	37496	No. of Violations	1
Docket No.	2009-0574-MSW-E	Order Type	1660
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Danielle Porras
		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

Culpability Enhancement *Subtotal 4*

Notes

Good Faith Effort to Comply Total Adjustments *Subtotal 5*

Economic Benefit Enhancement* *Subtotal 6*

Total EB Amounts	\$333
Approx. Cost of Compliance	\$8,613

*Capped at the Total EB \$ Amount

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

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

PAYABLE PENALTY

Screening Date 22-Apr-2009

Docket No. 2009-0574-MSW-E

PCW

Respondent Gerald Lowrey

Policy Revision 2 (September 2002)

Case ID No. 37496

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105701239

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

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

No adjustment for compliance history.

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

Screening Date 22-Apr-2009

Docket No. 2009-0574-MSW-E

PCW

Respondent Gerald Lowrey

Policy Revision 2 (September 2002)

Case ID No. 37496

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105701239

Media [Statute] Municipal Solid Waste

Enf. Coordinator Danielle Porras

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 330.15(c)

Violation Description

Failed to prevent unauthorized disposal of municipal solid waste. Specifically, the Respondent allowed approximately 1,000 scrap tires (approximately 100 cubic yards) to be disposed of at the Site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			X
Potential			

Percent 25%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0%

Matrix Notes

Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed protective levels.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1

43 Number of violation days

daily	
weekly	
monthly	
quarterly	X
semiannual	
annual	
single event	

mark only one with an x

Violation Base Penalty \$2,500

One quarterly event is recommended from the March 10, 2009 investigation date to the April 22, 2009 screening date.

Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDP RP/Settlement Offer

Extraordinary		
Ordinary		
N/A	X	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$2,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$333

Violation Final Penalty Total \$2,500

This violation Final Assessed Penalty (adjusted for limits) \$2,500

Economic Benefit Worksheet

Respondent Gerald Lowrey
Case ID No. 37496
Reg. Ent. Reference No. RN105701239
Media Municipal Solid 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
No commas or \$							

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	\$8,613	10-Mar-2009	17-Dec-2009	0.77	\$333	n/a	\$333
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly remove and dispose of 1,000 scrap tires at an authorized disposal site. Date required is the investigation date and the final date is the estimated 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

\$8,613

TOTAL

\$333

Compliance History Report

Customer/Respondent/Owner-Operator: CN603457334 LOWREY, GERALD Classification: Rating:
Regulated Entity: RN105701239 GERALD LOWREY PROPERTY Classification: Average Site Rating: 3.01
by Default

ID Number(s):

Location: 1242 FR 1510, BROOKSTON, TX, 75421

TCEQ Region: REGION 05 - TYLER

Date Compliance History Prepared: April 15, 2009

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: April 15, 2004 to April 15, 2009

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

Name: Danielle Porras Phone: (512) 239-2602

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/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s) ? N/A
5. When did the change(s) in owner or operator occur? N/A
- 6.

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
CONCERNING
GERALD LOWREY,
RN105701239

§
§
§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

DEFAULT ORDER
DOCKET NO. 2009-0574-MSW-E

At its _____ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 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 Gerald Lowrey ("Mr. Lowrey").

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

FINDINGS OF FACT

1. Mr. Lowrey owns and operates an unauthorized municipal solid waste disposal site at 1242 Farm Road 1510, Brookston, Lamar County, Texas (the "Site").
2. The Site involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. During an investigation conducted on March 10, 2009, a TCEQ Tyler Regional Office investigator documented that Mr. Lowrey failed to prevent the unauthorized disposal of municipal solid waste. Specifically, Mr. Lowrey allowed approximately 1,000 scrap tires (approximately 100 cubic yards) to be disposed of at the Site.
4. Mr. Lowrey received notice of the violation on or about June 7, 2009.
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 Gerald Lowrey” (the “EDPRP”) in the TCEQ Chief Clerk’s office on August 31, 2009.

6. By letter dated August 31, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Mr. Lowrey with notice of the EDPRP. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed”. The first class mail has not been returned, indicating that Mr. Lowrey received notice of the EDPRP.
7. More than 20 days have elapsed since Mr. Lowrey received notice of the EDPRP, provided by the Executive Director. Mr. Lowrey failed to file an answer, 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. Lowrey is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 7, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Mr. Lowrey failed to prevent the unauthorized disposal of municipal solid waste, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Mr. Lowrey with proper notice of the EDPRP as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 7, Mr. Lowrey 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. Lowrey and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Mr. Lowrey for violations of the Texas Water 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 five hundred dollars (\$2,500.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.

7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Mr. Lowrey is assessed an administrative penalty in the amount of two thousand five hundred dollars (\$2,500.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Mr. Lowrey'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: Gerald Lowrey; Docket No. 2009-0574-MSW-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. Lowrey shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Mr. Lowrey shall cease disposing of any additional municipal solid waste at the Site;
 - b. Within 30 days after the effective date of this Order, Mr. Lowrey shall remove all municipal solid waste to an authorized facility; and
 - c. Within 45 days after the effective date of this Order, Mr. Lowrey 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. Lowrey 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:

Mr. Michael Brashear, Waste Section Manager
Texas Commission on Environmental Quality
Tyler Regional Office
2916 Teague Drive
Tyler, TX 75701-3734

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

Gerald Lowrey
Docket No. 2009-0574-MSW-E
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SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF SHARESASA Y. ALEXANDER

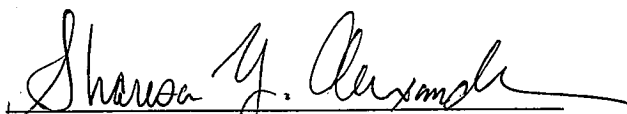
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

“My name is Sharesa Y. Alexander. 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 Gerald Lowrey” (the “EDPRP”) was filed with the Office of the Chief Clerk on August 31, 2009.

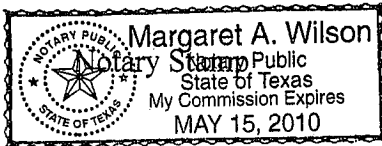
I sent the EDPRP to Mr. Lowrey at his last known address on August 31, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the wrapper sent by certified mail as “unclaimed”. The first class mail has not been returned, indicating the respondent received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

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


Sharesa Y. Alexander
Attorney
Texas Commission on Environmental Quality

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

Given under my hand and seal of office this 23rd day of OCTOBER, A.D., 2009.



Margaret Wilson
Notary Signature