

EXECUTIVE SUMMARY - ENFORCEMENT MATTER

DOCKET NO. 2010-1160-PST-E

RN101534840

CASE NO. 40042

RESPONDENT NAME: BILLY PEOPLES, JR.

ORDER TYPE:		
<input type="checkbox"/> 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 checked="" 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
<p>SITE WHERE VIOLATION(S) OCCURRED: 202 North Fannin Street, Rockwall, Rockwall, County</p> <p>TYPE OF OPERATION: former gas station</p> <p>SMALL BUSINESS: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>OTHER SIGNIFICANT MATTERS: There are no complaints related to this enforcement action. There is no record of additional pending enforcement action regarding this facility location.</p> <p>INTERESTED PARTIES: No one other than the ED and Respondent expressed an interest in this matter.</p> <p>COMMENTS RECEIVED: The <i>Texas Register</i> comment period expired February 8, 2011. No comments were received.</p> <p>CONTACTS AND MAILING LIST: TCEQ Attorney: Steven M. Fishburn, Litigation Division, MC 175, (512) 239-3400 Lena Roberts, Litigation Division, MC 175, (512) 239-3400 TCEQ Enforcement Coordinator: Jordan Jones, Air Enforcement Section, MC 149, (512) 239-2569 TCEQ Regional Contact: Sam Barrett, Dallas/Fort Worth Regional Office, MC R-04, (817) 588-5903 Respondent: Billy Peoples, Jr., P.O. Box 35, Rockwall, Texas 75087 Respondent's Attorney: Not represented by counsel on this enforcement matter.</p>		

VIOLATION SUMMARY CHART:		
VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>Type of Investigation:</p> <p><input type="checkbox"/> Complaint <input type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input checked="" type="checkbox"/> Records Review</p> <p>Date of Complaint: N/A</p> <p>Date of Investigation: July 6, 2010</p> <p>Date of NOE: July 7, 2010</p> <p>Background Facts: The EDPRP was filed on November 8, 2010, and mailed to Respondent via first class mail and certified mail, return receipt requested. According to the return receipt "green card," Respondent received the EDPRP on November 10, 2010. Respondent failed to file an answer and failed to request a hearing.</p> <p>Current Compliance Status: Respondent has not yet submitted documentation demonstrating compliance with the technical requirements. Respondent does not have a delivery certificate.</p> <p>PST: Failed to comply with all applicable release investigation and corrective action requirements, and failed to submit to the TCEQ detailed written records of the release determination following the removal from service of a UST system [30 TEX. ADMIN. CODE § 334.55(a)(6)(D)(i) and (ii)].</p>	<p>Total Assessed: \$2,675</p> <p>Total Deferred: \$0 <input type="checkbox"/> Expedited Order <input type="checkbox"/> Financial Inability to Pay</p> <p>SEP Conditional Offset: \$0</p> <p>Total Due to General Revenue: \$2,675</p> <p>This is a Default Order. Respondent has not actually paid any of the assessed administrative penalty but will be required to do so within 30 days under the terms of this Order.</p> <p>Compliance History Classifications: <i>Person/CN</i> – Average <i>Site/RN</i> – Average</p> <p>Major Source: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Applicable Penalty Policy: September 2002</p>	<p>Ordering Provisions: Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> 1. Within 30 days, submit a release determination report. 2. Within 45 days, submit written certification demonstrating compliance.



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	12-Jul-2010	Screening	16-Jul-2010	EPA Due	
	PCW	8-Nov-2010				

RESPONDENT/FACILITY INFORMATION			
Respondent	Billy Peoples Jr.		
Reg. Ent. Ref. No.	RN101534840		
Facility/Site Region	4-Dallas/Fort Worth	Major/Minor Source	Minor

CASE INFORMATION			
Enf./Case ID No.	40042	No. of Violations	1
Docket No.	2010-1160-PST-E	Order Type	1660
Media Program(s)	Petroleum Storage Tank	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Jordan Jones
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$2,500
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ADJUSTMENTS (+/-) TO SUBTOTAL 1

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

Compliance History	7.0% Enhancement	Subtotals 2, 3, & 7	\$175
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Notes	Enhancement for one same/similar and one dissimilar NOV.
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Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes	The Respondent does not meet the culpability criteria.
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Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$428	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$9,500	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$2,675
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes	
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Final Penalty Amount	\$2,675
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$2,675
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$2,675
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Screening Date 16-Jul-2010

Docket No. 2010-1160-PST-E

PCW

Respondent Billy Peoples Jr.

Case ID No. 40042

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101534840

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jordan Jones

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	1	5%
	Other written NOVs	1	2%
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 submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
<i>Please Enter Yes or No</i>			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 7%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for one same/similar and one dissimilar NOV.

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

Screening Date 16-Jul-2010

Docket No. 2010-1160-PST-E

PCW

Respondent Billy Peoples Jr.

Policy Revision 2 (September 2002)

Case ID No. 40042

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101534840

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Jordan Jones

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 334.55(a)(6)(D)(i) and 334.55(a)(6)(D)(ii)

Violation Description Failed to comply with all applicable release investigation and corrective action requirements and failed to submit detailed written records of the release determination following the removal from service of a UST system.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (25%).

>> Programmatic Matrix

Table with columns: Falsification, Major, Moderate, Minor, and Percent (0%).

Matrix Notes Human health or the environment will or could be exposed to pollutants which would exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 1 10 Number of violation days

Table for event frequency: daily, weekly, monthly (marked with x), quarterly, semiannual, annual, single event.

Violation Base Penalty \$2,500

One monthly event is recommended from the July 06, 2010 investigation date to the July 16, 2010 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked 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 \$428 Violation Final Penalty Total \$2,675

This violation Final Assessed Penalty (adjusted for limits) \$2,675

Economic Benefit Worksheet

Respondent Billy Peoples Jr.
Case ID No. 40042
Req. Ent. Reference No. RN101534840
Media Petroleum Storage Tank
Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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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	\$9,500	6-Jul-2010	31-May-2011	0.90	\$428	n/a	\$428
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to conduct a release determination and submit a report. The 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

\$9,500

TOTAL

\$428

Compliance History Report

Customer/Respondent/Owner-Operator: CN600805857 PEOPLES, BILLY JR Classification: Average Rating: 0.75
Regulated Entity: RN101534840 FORMER GAS STATION Classification: Average Site Rating: 0.75
ID Number(s): Petroleum Storage Tank 10693
Location: 202 NORTH FANNIN STREET, ROCKWALL, ROCKWALL CO.
TCEQ Region: REGION 04 - DFW METROPLEX
Date Compliance History Prepared: 7/16/2010
Agency Decision Requiring Compliance History: Enforcement
Compliance Period: July 16, 2005 to July 16, 2010
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:
Name: Jordan Jones Phone: (512) 239-2569

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
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. Rating Date: 9/1/2009 Repeat Violator: No

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, 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 06/11/2008 (682180)
 - 2 10/10/2008 (705094)
 - 3 10/20/2008 (704359)
 - 4 03/08/2010 (794775)
 - 5 07/07/2010 (829897)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 06/11/2008 (682180)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.47(a)(2)
Description: Failure to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing underground storage tank (UST) system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.

Date: 03/08/2010 (794775)
Self Report? NO Classification: Moderate
Citation: 30 TAC Chapter 334, SubChapter C 334.55(a)(6)(D)(ii)
Description: Failure to assemble written records detailing the permanent removal from service of an underground storage tank (UST) system, and filing a copy of said records with the Commission. underground storage tank (UST) system for which any applicable component of the system is not brought into timely compliance with the upgrade requirements.
 - 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

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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
BILLY PEOPLES, JR;
RN101534840**

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**BEFORE THE

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY**

DEFAULT ORDER

DOCKET NO. 2010-1160-PST-E

At its _____ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26 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 Billy Peoples, Jr. ("Respondent").

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

FINDINGS OF FACT

1. Respondent owns, as defined in 30 TEX. ADMIN. CODE § 334.2(73), property which formerly contained an underground storage tank ("UST") system, located at 202 North Fannin Street in Rockwall, Rockwall County, Texas (the "Facility"). The USTs at the Facility were not exempt or excluded from regulation under the Texas Water Code or the rules of the Commission, and contained a regulated petroleum substance as defined in the rules of the TCEQ.
2. During a record review conducted on July 6, 2010, a TCEQ Dallas/Fort Worth Regional Office investigator documented that Respondent failed to comply with all applicable release investigation and corrective action requirements, and failed to submit to the TCEQ detailed written records of the release determination following the removal from service of a UST system.
3. Respondent received notice of the violation on or about July 12, 2010.
4. 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 Billy Peoples, Jr." (the "EDPRP") in the TCEQ Chief Clerk's office on November 8, 2010.
5. By letter dated November 8, 2010, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDPRP. According to the

return receipt "green card," Respondent received notice of the EDPRP on November 10, 2010, as evidenced by the signature on the card.

6. More than 20 days have elapsed since Respondent received notice of the EDPRP, provided by the Executive Director. Respondent 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 No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to comply with all applicable release investigation and corrective action requirements, and failed to submit to the TCEQ detailed written records of the release determination following the removal from service of a UST system, in violation of 30 TEX. ADMIN. CODE § 334.55(a)(6)(D)(i) and 334.55(a)(6)(D)(ii).
3. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 6, Respondent 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 Respondent 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 Respondent for violations of state statutes 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 six hundred seventy-five dollars (\$2,675.00) 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. Respondent is assessed an administrative penalty in the amount of two thousand six hundred seventy-five dollars (\$2,675.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondent'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.

2. The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order. All checks submitted to pay the penalty imposed by this Order shall be made out to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Billy Peoples, Jr.; Docket No. 2010-1160-PST-E" to:

Financial Administration Division, Revenues Section
Texas Commission on Environmental Quality
Attention: Cashier's Office, MC 214
P.O. Box 13088
Austin, Texas 78711-3088

3. Respondent shall undertake the following technical requirements:

- a. Within 30 days after the effective date of this Order, Respondent shall submit a release determination report, in accordance with 30 TEX. ADMIN. CODE § 334.55; and
- b. Within 45 days after the effective date of this Order, Respondent shall submit written certification and detailed supporting documentation, including photographs, receipts, and /or other records, to demonstrate compliance with Ordering Provision No. 3.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Respondent shall submit the written certification and 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

with a copy to:

Mr. Sam Barrett, Waste Section Manager
Dallas/Fort Worth Regional Office
Texas Commission on Environmental Quality
2309 Gravel Dr.
Fort Worth, Texas 76118-6951

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

5. The provisions of this Order shall apply to and be binding upon Respondent. Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
6. If Respondent 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, Respondent's failure to comply is not a violation of this Order. Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondent shall notify the Executive Director within seven days after Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
7. 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 Respondent shall be made in writing to the Executive Director. Extensions are not effective until Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
8. 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 Respondent if the Executive Director determines that Respondent has not complied with one or more of the terms or conditions in this Order.
9. 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.
10. 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.

S I G N A T U R E P A G E

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

AFFIDAVIT OF STEVEN M. FISHBURN

STATE OF TEXAS

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COUNTY OF TRAVIS

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"My name is Steven M. Fishburn. 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 Billy Peoples, Jr.," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on November 8, 2010.

The EDPRP was mailed to Respondent's last known address on November 8, 2010 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on November 10, 2010, as evidenced by the signature on the card.

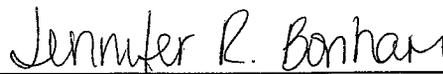
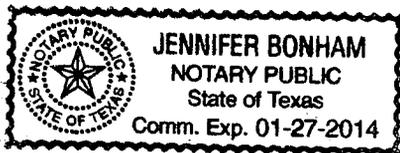
More than 20 days have elapsed since Respondent received notice of the EDPRP Respondent failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."



Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Steven M. Fishburn, 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 20 day of December, A.D. 2010.



Notary Signature