

Executive Summary – Enforcement Matter – Case No. 35354  
Dennie Shelton  
RN105196703  
Docket No. 2010-0883-MSW-E

**Order Type:**  
Default Order

**Findings Order Justification:**  
N/A

**Media:**  
MSW

**Small Business:**  
Yes

**Location(s) Where Violation(s) Occurred:**  
301 Wolf Street, Brady, McCulloch County

**Type of Operation:**  
transformer dismantling and disposal operation

**Other Significant Matters:**

Additional Pending Enforcement Actions: None  
Past-Due Penalties: None  
Past-Due Fees: None  
Other: None

Interested Third-Parties: The complainant has not expressed a desire to protest this action or speak at Agenda.

**Texas Register Publication Date:** November 19, 2010

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$7,875

**Amount Deferred for Expedited Settlement:** N/A

**Amount Deferred for Financial Inability to Pay:** N/A

**Total Paid to General Revenue:** \$0

**Total Due to General Revenue:** \$7,875

**SEP Conditional Offset:** N/A

**Compliance History Classifications:**

Person/CN – Average  
Site/RN – Average

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

Dennie Shelton

RN105196703

Docket No. 2010-0883-MSW-E

***Investigation Information***

**Complaint Date(s):** July 28, 2008  
**Complaint Information:** Complaint alleged Respondent was burying contaminated soil at the site.  
**Date(s) of Investigation:** July 31, 2008 (complaint investigation); May 31, 2010  
**Date(s) of NOV(s):** August 7, 2008  
**Date(s) of NOE(s):** December 5, 2010

***Violation Information***

Failed to prevent the unauthorized disposal of MSW (scrap tires, scrap metal, household waste, construction and demolition waste, and transformer casings and insulators) [30 TEX. ADMIN. CODE § 330.15(c)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

Respondent ceased operations on or about July 31, 2008, and no longer has access to the Site.

**Technical Requirements:**

1. Within 90 days:
  - a. Either:
    - i. Obtain permission from the current owner of the Site to allow Respondent and/or Respondent's agent(s) access to the Site for the limited purpose of removing the MSW;
    - ii. Remove all of the MSW from the Site; and
    - iii. Dispose of the MSW at the authorized facility.
  - b. Or, in lieu of Technical Requirement No. 1.a., submit documentation that the owner of the Site refused to grant Respondent and/or Respondent's agent(s) permission to access the Site.
2. Within 105 days, submit written certification demonstrating compliance.

***Litigation Information***

**Date Petition(s) Filed:** June 3, 2010; June 7, 2010; June 17, 2010  
**Date(s) Green Card(s) Signed:** June 24, 2010  
**Date(s) Answer(s) Filed:** N/A  
**SOAH Referral Date:** N/A  
**Hearing Date(s):** N/A

***Contact Information***

**TCEQ Attorneys:** James Sallans, Litigation Division, MC 175, (512) 239-3400  
Lena Roberts, Litigation Division, MC 175, (512) 239-3400

**TCEQ SEP Coordinator:** N/A

**TCEQ Enforcement Coordinator:** Mike Pace, Waste Enforcement Section, (817) 588-5933

**TCEQ Regional Contact:** Chris Mayben, San Angelo Regional Office, MC R-8, (325) 655-9479

**Respondent:** Dennie Shelton, P.O. Box 2, Mullin, Texas 76864

**Respondent's Attorney:** N/A



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

**TCEQ**

<b>DATES</b>	<b>Assigned</b>	8-Dec-2008			
	<b>PCW</b>	1-Jun-2010	<b>Screening</b>	7-Jan-2009	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Dennie Shelton
<b>Reg. Ent. Ref. No.</b>	RN105196703
<b>Facility/Site Region</b>	8-San Angelo
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	35354	<b>No. of Violations</b>	1
<b>Docket No.</b>	2010-0883-MSW-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	John Shelton
		<b>EC's Team</b>	Enforcement Team 6
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	<b>\$7,500</b>
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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.

<b>Compliance History</b>	5.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	<b>\$375</b>
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<b>Notes</b>	Enhancement for one previous NOV for same or similar violations.
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<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	<b>\$0</b>
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<b>Notes</b>	The Respondent does not meet the culpability criteria.
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<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	<b>\$0</b>
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	<b>\$0</b>
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Total EB Amounts	\$567	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$11,500	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$7,875</b>
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	<b>\$0</b>
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Reduces or enhances the Final Subtotal by the indicated percentage.

<b>Notes</b>	
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<b>Final Penalty Amount</b>	<b>\$7,875</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$7,875</b>
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	<b>\$0</b>
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

<b>Notes</b>	Deferral not offered for non-expedited settlement.
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<b>PAYABLE PENALTY</b>	<b>\$7,875</b>
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Screening Date 7-Jan-2009

Docket No. 2010-0883-MSW-E

PCW

Respondent Dennie Shelton

Policy Revision 2 (September 2002)

Case ID No. 35354

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105196703

Media [Statute] Municipal Solid Waste

Enf. Coordinator John Shelton

### 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> )	1	5%
	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 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) 5%

#### >> 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 previous NOV for same or similar violations.
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Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

**Screening Date** 7-Jan-2009 **Docket No.** 2010-0883-MSW-E **PCW**  
**Respondent** Dennie Shelton *Policy Revision 2 (September 2002)*  
**Case ID No.** 35354 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105196703  
**Media [Statute]** Municipal Solid Waste  
**Enf. Coordinator** John Shelton

**Violation Number** 1

**Rule Cite(s)** 30 Tex. Admin. Code § 330.15(c)

**Violation Description** Failed to prevent the unauthorized disposal of municipal solid waste ("MSW"), as documented during an investigation conducted on October 9, 2008. Specifically, approximately 4,000 cubic yards of MSW, including scrap tires, scrap metal, scrap wires, old transformer casings, fiberglass bathtub, construction debris, numerous ceramic transformer insulators, old furniture, a metal cylinder, and several fifty-five gallon containers were disposed of at the site.

**Base Penalty** \$10,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual		x		25%
	Potential				

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
				0%

**Matrix Notes** Human health or the environment has been exposed to significant amounts of pollutants which do not 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 3 90 Number of violation days

<i>mark only one with an x</i>	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

**Violation Base Penalty** \$7,500

Three monthly events are recommended from the October 9, 2008 investigation date to the January 7, 2009 screening date.

**Good Faith Efforts to Comply** 0.0% Reduction \$0

	Before NOV	NOV to EDRP/Settlement
Extraordinary		
Ordinary		
N/A	x	mark with x

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

**Violation Subtotal** \$7,500

**Economic Benefit (EB) for this violation** **Statutory Limit Test**

**Estimated EB Amount** \$567 **Violation Final Penalty Total** \$7,875

**This violation Final Assessed Penalty (adjusted for limits)** \$7,875

## Economic Benefit Worksheet

**Respondent** Dennie Shelton  
**Case ID No.** 35354  
**Reg. Ent. Reference No.** RN105196703  
**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

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$11,500	9-Oct-2008	4-Oct-2009	0.99	\$567	n/a	\$567
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs: Estimated cost to dispose of approximately 4,000 cubic yards of waste at an authorized landfill. 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)**

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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	\$11,500	<b>TOTAL</b>	\$567
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# Compliance History Report

Customer/Respondent/Owner-Operator: CN603277088 SHELTON, DENNIE Classification: AVERAGE Rating: 2.50  
Regulated Entity: RN105196703 FLOYD TEAGUE RESIDENCE Classification: AVERAGE Site Rating: 2.50  
ID Number(s):  
Location: 301 WOLF ST, BRADY, TX, 76825  
TCEQ Region: REGION 08 - SAN ANGELO  
Date Compliance History Prepared: January 07, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: January 07, 2004 to January 07, 2009

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

Name: John Shelton Phone: (512) 239-2563

## 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
6. Rating Date: 9/1/2008 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 | 01/17/2008 | (615013) |
| 2 | 12/02/2008 | (706030) |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |              |   |          |                       |
|--------------|---|----------|-----------------------|
| Date:        | 08/07/2008  | (689158) |                       |
| Self Report? | NO  |          | Classification: Major |
| Citation:    | 30 TAC Chapter 330, SubChapter A 330.15(c)        |          |                       |
| Description: | Failure to properly manage municipal solid waste. |          |                       |
- 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.  
Sites Outside of Texas  
N/A

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# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
DENNIE SHELTON;  
RN105196703**

**§  
§  
§  
§  
§**

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2010-0883-MSW-E**

At its \_\_\_\_\_ agenda meeting, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered the Executive Director's Second Amended 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 Dennie Shelton ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent operated a transformer dismantling and disposal operation at 301 Wolf Street in Brady, McCulloch County, Texas (the "Site"). The Site involved the management and/or the disposal of municipal solid waste ("MSW") and/or industrial hazardous waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on July 31, 2008, a follow-up investigation conducted on October 9, 2008, and a record review conducted on May 31, 2010, a TCEQ San Angelo Regional Office investigator documented that Respondent failed to prevent the unauthorized disposal of MSW. Specifically, approximately 4,000 cubic yards of MSW, including scrap tires, scrap metal, scrap wires, old transformer casings, fiberglass bathtub, construction debris, numerous ceramic transformer insulators, old furniture, a metal cylinder, and several fifty-five gallon containers were disposed of at the site.
3. Respondent received notice of the violation on or about December 10, 2010.
4. The Executive Director recognizes that Respondent ceased operations on or about July 31, 2008, and no longer has access to the Site.
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 Dennie Shelton" (the "EDPRP") in the TCEQ Chief Clerk's office on June 3, 2010. Service was unsuccessful.

6. 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 Dennie Shelton" (the "EDFARP") in the TCEQ Chief Clerk's office on June 7, 2010. Service was unsuccessful.
7. The Executive Director filed the "Executive Director's Second 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 Dennie Shelton" (the "EDSARP") in the TCEQ Chief Clerk's office on June 17, 2010.
8. By letter dated June 17, 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 EDSARP. According to the return receipt "green card," Respondent received notice of the EDSARP on June 24, 2010, as evidenced by the signature on the card.
9. More than 20 days have elapsed since Respondent received notice of the EDSARP, provided by the Executive Director. Respondent failed to file an answer and failed to request a hearing.

#### **CONCLUSIONS OF LAW**

1. As evidenced by Finding of Fact No. 1, Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. HEALTH & SAFETY CODE ch. 361 and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2, Respondent failed to prevent the unauthorized disposal of MSW, in violation of 30 TEX. ADMIN. CODE § 330.15(c).
3. As evidenced by Findings of Fact Nos. 7 and 8, the Executive Director timely served Respondent with proper notice of the EDSARP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 9, 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 seven thousand eight hundred seventy-five dollars (\$7,875.00) 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 seven thousand eight hundred seventy-five dollars (\$7,875.00) 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: Dennie Shelton; Docket No. 2010-0883-MSW-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 90 days after the effective date of this Order, Respondent shall:
    - i. Either:
      - A. Obtain permission from the current owner of the Site to allow Respondent and/or Respondent's agent(s) access to the Site for the limited purpose of removing the MSW;
      - B. Remove all of the MSW from the Site; and
      - C. Dispose of the MSW at an authorized facility.
    - ii. Or, in lieu of Ordering Provision No. 3.a.i., submit documentation that the owner of the Site refused to grant Respondent and/or Respondent's agent(s) permission to access the Site.
  - b. Within 105 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 either Ordering Provision No. 3.a.i. or 3.a.ii. The certification shall be notarized by a State of Texas Notary Public and shall 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  
Texas Commission on Environmental Quality  
Enforcement Division, MC 149A  
P.O. Box 13087  
Austin, Texas 78711-3087

and:

Waste Section Manager  
Texas Commission on Environmental Quality  
San Angelo Regional Office  
622 South Oaks Street, Suite K  
San Angelo, Texas 76903-7035

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.
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

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For the Commission

**AFFIDAVIT OF JIM SALLANS**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

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"My name is Jim Sallans. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, 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 Dennie Shelton" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on June 3, 2010.

The EDPRP was mailed to Respondent's last known address on June 3, 2010, via certified mail, return receipt requested, and via first class mail, postage prepaid. Service of Respondent with notice of the EDPRP was unsuccessful.

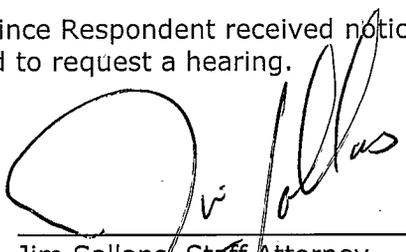
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By letter dated June 17, 2010, sent to Respondent's last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondent with notice of the EDSARP. According to the return receipt "green card," Respondent received notice of the EDSARP on June 24, 2010, as evidenced by the signature on the card.

More than 20 days have elapsed since Respondent received notice of the EDSARP. Respondent failed to file an answer, failed to request a hearing.



\_\_\_\_\_  
Jim Sallans, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

**Affidavit of Jim Sallans**  
**Page 2**

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

Given under my hand and seal of office this 29~~th~~ day of April, A.D. 2011.

  
Notary Signature

