

Executive Summary – Enforcement Matter – Case No. 39921
Birda Miller and Mary Madison
RN104914684
Docket No. 2010-1026-MSW-E

Order Type:

Default Order

Findings Order Justification:

N/A

Media:

MSW

Small Business:

N/A

Location Where Violation Occurred:

Southeast corner of the intersection of English Street and Barker Street, Trinity, Trinity County

Type of Operation:

Unauthorized municipal solid waste ("MSW") disposal site

Other Significant Matters:

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

Texas Register Publication Date: February 18, 2011

Comments Received: None

Penalty Information

Total Penalty Assessed: \$ 1,050

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: \$1,050

SEP Conditional Offset: N/A

Compliance History Classifications:

Person/CN – Not yet rated
Site/RN – Average

Major Source: No

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Complaint Information: N/A
Date(s) of Investigation: May 11, 2010
Date(s) of NOV(s): February 9, 2010
Date(s) of NOE(s): June 8, 2010

Violation Information

Failed to prevent the unauthorized disposal of MSW [30 TEX. ADMIN. CODE § 330.15(c)].

Corrective Actions/Technical Requirements

Corrective Actions Completed:

N/A

Technical Requirements:

1. Immediately, cease disposing of any additional MSW at the Site.
2. Within 30 days, remove all MSW from the Site and dispose of it at an authorized facility.
3. Within 45 days, submit written certification demonstrating compliance.

Litigation Information

Date Petition(s) Filed: November 22, 2010
Date(s) Green Card(s) Signed: November 24, 2010 (Birda Miller); Unclaimed (Mary Madison)
Date(s) Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s):
Preliminary hearing: N/A
Evidentiary hearing: N/A

Contact Information

TCEQ Attorneys: Ms. Stephanie Frazee, Litigation Division, MC 175, (512) 239-3400
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-3400
TCEQ SEP Coordinator: N/A
TCEQ Enforcement Coordinator: Mr. Tate Barret, Waste Enforcement Section, (713) 422-8968
TCEQ Regional Contact: Mr. Derek Eades, Beaumont Regional Office, MC R-10, (409) 898-3838
Respondent: Ms. Birda Miller, 179 Hamilton Avenue, Trinity, Texas 75862
Ms. Mary Madison, 179 Hamilton Avenue, Trinity, Texas 75862
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	14-Jun-2010			
	PCW	13-Oct-2010	Screening	14-Jun-2010	EPA Due

RESPONDENT/FACILITY INFORMATION					
Respondent	Birda Miller and Mary Madison				
Reg. Ent. Ref. No.	RN104914684				
Facility/Site Region	10-Beaumont	Major/Minor Source	Minor		

CASE INFORMATION					
Enf./Case ID No.	39921	No. of Violations	1		
Docket No.	2010-1026-MSW-E	Order Type	1660		
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No		
Multi-Media		Enf. Coordinator	Tate Barrett		
		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	\$1,000
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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	5.0% Enhancement	Subtotals 2, 3, & 7	\$50
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Notes	Recommended enhancement for one previous Notice of Violation with same/similar violations.
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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	\$133	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$3,477	

SUM OF SUBTOTALS 1-7	Final Subtotal	\$1,050
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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	\$1,050
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$1,050
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DEFERRAL	0.0%	Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes	Deferral not offered for non-expedited settlement.
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PAYABLE PENALTY	\$1,050
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Screening Date 14-Jun-2010

Docket No. 2010-1026-MSW-E

PCW

Respondent Birda Miller and Mary Madison

Policy Revision 2 (September 2002)

Case ID No. 39921

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN104914684

Media [Statute] Municipal Solid Waste

Enf. Coordinator Tate Barrett

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)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Recommended enhancement for one previous Notice of Violation with same/similar violations.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 5%

Screening Date	14-Jun-2010	Docket No.	2010-1026-MSW-E	PCW
Respondent	Birda Miller and Mary Madison			<i>Policy Revision 2 (September 2002)</i>
Case ID No.	39921			<i>PCW Revision October 30, 2008</i>
Reg. Ent. Reference No.	RN104914684			
Media [Statute]	Municipal Solid Waste			
Enf. Coordinator	Tate Barrett			
Violation Number	<input type="text" value="1"/>			
Rule Cite(s)	<input type="text" value="30 Tex. Admin. Code § 330.15(c)"/>			
Violation Description	<input 380="" and="" approximately="" at="" construction="" cubic="" debris="" disposed="" household="" msw").="" of="" site."="" specifically,="" the="" type="text" value="Failed to prevent the unauthorized disposal of municipal solid waste (" was="" waste="" yards=""/>			
Base Penalty	<input type="text" value="\$10,000"/>			

>> Environmental, Property and Human Health Matrix

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

>> Programmatic Matrix

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text" value="0%"/>
Matrix Notes	<input type="text" value="Human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of this violation."/>				
Adjustment	<input type="text" value="\$9,000"/>				

Violation Events

Number of Violation Events	<input type="text" value="1"/>	<input type="text" value="34"/>	Number of violation days
<i>mark only one with an x</i>	daily	<input type="text"/>	Violation Base Penalty <input type="text" value="\$1,000"/>
	weekly	<input type="text"/>	
	monthly	<input type="text"/>	
	quarterly	<input checked="" type="text" value="x"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	<input type="text"/>	
<input type="text" value="One quarterly event is recommended based on documentation of the violation during the May 11, 2010 investigation to the June 14, 2010 screening date."/>			

Good Faith Efforts to Comply Reduction

	Before NOV	NOV to EDRP/Settlement
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="text" value="x"/>	<input type="text" value="mark with x"/>
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>	
Violation Subtotal	<input type="text" value="\$1,000"/>	

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

Estimated EB Amount	<input type="text" value="\$133"/>	Violation Final Penalty Total	<input type="text" value="\$1,050"/>
This violation Final Assessed Penalty (adjusted for limits)		<input type="text" value="\$1,050"/>	

Economic Benefit Worksheet

Respondent Birda Miller and Mary Madison
Case ID No. 39921
Reg. Ent. Reference No. RN104914684
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	\$3,477	11-May-2010	14-Feb-2011	0.76	\$133	n/a	\$133
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to remove the MSW and to dispose of it at a facility authorized to accept the waste. 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

\$3,477

TOTAL

\$133

Compliance History Report

Customer/Respondent/Owner-Operator: CN603600487 Miller, Birda Classification: Rating:
 Regulated Entity: RN104914684 A0628 WILSON GEORGE W TRACT Classification: AVERAGE Site Rating: 6.00
 21 TRINITY TEXAS
 ID Number(s):
 Location: SOUTHEAST CORNER OF THE INTERSECTION OF
 ENGLISH STREET AND BARKER STREET
 TCEQ Region: REGION 10 - BEAUMONT
 Date Compliance History Prepared: June 14, 2010
 Agency Decision Requiring Compliance History: Enforcement
 Compliance Period: June 14, 2005 to June 14, 2010
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History
 Name: Tate Barrett Phone: (713) 422-8968

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. 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	09/09/2009	(764292)
2	12/22/2009	(781946)
3	02/09/2010	(785969)
4	06/08/2010	(803740)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 Date: 02/09/2010(785969)
 Self Report? NO
 Citation: 30 TAC Chapter 330, SubChapter A 330.15(a)
 Description: Failure to properly dispose of waste.
 Classification: Moderate
- 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

Compliance History

Customer/Respondent/Owner-Operator: CN603776477 Madison, Mary Classification: Rating:

Regulated Entity: RN104914684 A0628 WILSON GEORGE W TRACT Classification: AVERAGE Site Rating: 6.00
21 TRINITY TEXAS

ID Number(s):

Location: SOUTHEAST CORNER OF THE INTERSECTION OF ENGLISH STREET AND BARKER STREET

TCEQ Region: REGION 10 - BEAUMONT

Date Compliance History Prepared: November 19, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 14, 2005 to June 14, 2010

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

Name: Tate Barrett Phone: (713) 422-8968

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. 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 09/09/2009 (764292)
 - 2 12/22/2009 (781946)
 - 3 02/09/2010 (785969)
 - 4 06/08/2010 (803740)
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 02/09/2010 (785969)
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter A 330.15(a)
 - Description: Failure to properly dispose of 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.
N/A
- Sites Outside of Texas
N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN	§	
ENFORCEMENT ACTION	§	BEFORE THE
CONCERNING	§	
BIRDA MILLER AND MARY	§	TEXAS COMMISSION ON
MADISON;	§	
RN104914684	§	ENVIRONMENTAL QUALITY

DEFAULT ORDER

DOCKET NO. 2010-1026-MSW-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 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 respondents. The respondents made the subject of this Order are Birda Miller ("Ms. Miller") and Mary Madison ("Ms. Madison") (collectively, "Respondents").

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

FINDINGS OF FACT

1. Ms. Miller operates and Ms. Madison owns an unauthorized municipal solid waste ("MSW") disposal site located at the southeast corner of the intersection of English Street and Barker Street in Trinity, Trinity County, Texas (the "Facility"). The Facility involves the management and/or the disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on May 11, 2010, a TCEQ Beaumont Regional Office investigator documented that Respondents failed to prevent the unauthorized disposal of MSW. Specifically, approximately 380 cubic yards of construction debris and household waste had been disposed of at the Site.
3. Respondents received notice of the violation on or about June 13, 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 Birda Miller and Mary Madison" (the "EDPRP") in the TCEQ Chief Clerk's office on November 22, 2010.
5. By letter dated November 22, 2010, sent to each Respondents' last known addresses via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondents with notice of the EDPRP. According to the return receipt "green card," Ms. Miller received notice of the EDPRP on November 24, 2010, as evidenced by the signature on the card. The United States Postal

Service returned the EDPRP sent to Ms. Madison by certified mail as "unclaimed." The first class mail has not been returned, indicating that Ms. Madison received notice of the EDPRP.

6. More than 20 days have elapsed since Respondents received notice of the EDPRP provided by the Executive Director. Respondents 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, Respondents are 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, Respondents 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. 4 and 5, the Executive Director timely served Respondents with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE §§ 70.104(a) and 70.104(c)(2).
4. As evidenced by Finding of Fact No. 6, Respondents 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 Respondents 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 Respondents 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 one thousand fifty dollars (\$1,050.00) 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. Respondents are assessed an administrative penalty in the amount of one thousand fifty dollars (\$1,050.00) for violations of state statutes and rules of the TCEQ. The payment of this administrative penalty and Respondents' 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: Birda Miller and Mary Madison; Docket No. 2010-1026-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. Respondents shall undertake the following technical requirements:
 - a. Immediately upon the effective date of this Order, Respondents shall cease disposing of any additional MSW at the Site.
 - b. Within 30 days after the effective date of this Order, Respondents shall remove all MSW from the Site and dispose of it at an authorized facility.
 - c. Within 45 days after the effective date of this Order, Respondents shall submit written certification and detailed supporting documentation, including photographs, receipts, and/or other records, to demonstrate compliance with Ordering Provision Nos. 3.a. and 3.b. 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."

Respondents 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
Beaumont Regional Office
3870 Eastex Freeway
Beaumont, Texas 77703-1892

4. All relief not expressly granted in this Order is denied.
5. The provisions of this Order shall apply to and be binding upon Respondents. Respondents are ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
6. If Respondents fail 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, Respondents' failure to comply is not a violation of this Order. Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Respondents shall notify the Executive Director within seven days after Respondents become 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 Respondents shall be made in writing to the Executive Director. Extensions are not effective until Respondents receive 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 Respondents have 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. WATER 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 STEPHANIE J. FRAZEE

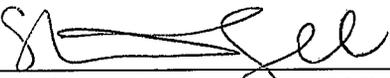
STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

"My name is Stephanie J. Frazee. 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 Birda Miller and Mary Madison," (the "EDPRP") was filed in the TCEQ Chief Clerk's office on November 22, 2010.

By letter dated November 22, 2010, sent to Respondents' last known addresses via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondents with notice of the EDPRP. According to the return receipt "green card," Ms. Miller received notice of the EDPRP on November 24, 2010, as evidenced by the signature on the card. The United States Postal Service returned the EDPRP sent to Ms. Madison by certified mail as "unclaimed." The first class mail has not been returned, indicating that Ms. Madison received notice of the EDPRP.

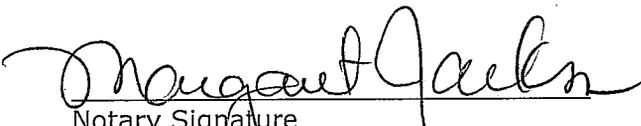
More than 20 days have elapsed since Respondents received notice of the EDPRP. Respondents failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."



Stephanie J. Frazee, Staff Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Stephanie J. Frazee, 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 31st day of January, A.D. 2011.



Notary Signature

