

Cecil Lou Frasier

RN105602726

Docket No. 2009-1049-MSW-E

**Order Type:**

Default Order Following SOAH Hearing

**Findings Order Justification:**

N/A

**Media:**

MSW

**Small Business:**

N/A

**Location(s) Where Violation(s) Occurred:**

2400 Blk. E. Loop 254, Ranger, Eastland County

**Type of Operation:**

Unauthorized municipal solid waste disposal site

**Other Significant Matters:**

Additional Pending Enforcement Actions: Agreed Order Docket Nos. 2009-0728-MSW-E and 2009-1811-MSW-E in re: John Charles May, Edward Russell Leath, Christopher Atwood Leath, Melissa May Leath and Marilyn Louis Leath-Dziuk (same RN)

Past-Due Penalties: None

Past-Due Fees: None

Other: This matter was severed from Docket Nos. 2009-0728-MSW-E and 2009-1811-MSW-E due to Respondent's default at SOAH.

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

**Texas Register Publication Date:** July 22, 2011

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$5,250

**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:** \$5,250

**Compliance History Classifications:**

Person/CN – Not yet rated

Site/RN – Not yet rated

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

Cecil Lou Frasier

RN105602726

Docket No. 2009-1049-MSW-E

***Investigation Information***

**Complaint Date(s):** August 10, 2008  
Complaint Information: One complaint was received, alleging that an ongoing unauthorized dump was present at the site.

**Date(s) of Investigation:** September 3, 2008, February 17, 2009 and April 6, 2009

**Date(s) of NOV(s):** September 25, 2008

**Date(s) of NOE(s):** May 4, 2009

***Violation Information***

Failed to prevent the unauthorized disposal of municipal solid waste [30 TEX. ADMIN. CODE §§ 330.7(a), and 330.15(a) and (c)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**  
Respondent no longer owns the site.

**Technical Requirements:**  
N/A

***Litigation Information***

**Date Petition(s) Filed:** July 13, 2009; November 9, 2009

**Date Answer(s) Filed:** August 11, 2009

**SOAH Referral Date:** September 10, 2009

**Hearing Date(s):**  
Preliminary hearing: October 29, 2009; March 25, 2010; May 27, 2010  
Evidentiary hearing: April 5-7, 2011

***Contact Information***

**TCEQ Attorneys:** Jennifer Cook, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400

**TCEQ Enforcement Coordinator:** Clinton Sims, Waste Enforcement Section, (512) 239- 6933

**TCEQ Regional Contact:** Mike Taylor, Abilene Regional Office, (325) 698-6125

**Respondent:** Cecil Lou Frasier, 228 Keith Street, Hanford, CA 93230

**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>	4-May-2009			
	<b>PCW</b>	19-May-2009	<b>Screening</b>	5-May-2009	<b>EPA Due</b>

<b>RESPONDENT/FACILITY INFORMATION</b>	
<b>Respondent</b>	Cecil Lou Frasier
<b>Reg. Ent. Ref. No.</b>	RN105602726
<b>Facility/Site Region</b>	3-Abilene
<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	37651	<b>No. of Violations</b>	1
<b>Docket No.</b>	2009-1049-MSW-E	<b>Order Type</b>	Findings
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Clinton Sims
		<b>EC's Team</b>	Enforcement Team 7
<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>\$5,000</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>\$250</b>
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<b>Notes</b>	Enhancement for one NOV with 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	\$9,282	*Capped at the Total EB \$ Amount
Approx. Cost of Compliance	\$233,655	

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	<b>\$5,250</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>\$5,250</b>
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	<b>\$5,250</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>	No deferral is recommended for Findings Orders.
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<b>PAYABLE PENALTY</b>	<b>\$5,250</b>
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**Screening Date** 5-May-2009

**Docket No.** 2009-1049-MSW-E

**PCW**

**Respondent** Cecil Lou Frasier

*Policy Revision 2 (September 2002)*

**Case ID No.** 37651

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN105602726

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** Clinton Sims

**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** Enhancement for one NOV with same or similar violations.

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

**Screening Date** 5-May-2009 **Docket No.** 2009-1049-MSW-E **PCW**  
**Respondent** Cecil Lou Frasier *Policy Revision 2 (September 2002)*  
**Case ID No.** 37651 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN105602726  
**Media [Statute]** Municipal Solid Waste  
**Enf. Coordinator** Clinton Sims

**Violation Number**

**Rule Cite(s)**

**Violation Description**

**Base Penalty**

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual	<input type="text" value="x"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="50%"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

Falsification	Major	Moderate	Minor	Percent
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="0%"/>

**Matrix Notes**

**Adjustment**

**Violation Events**

Number of Violation Events   Number of violation days

*mark only one with an x*

daily	<input type="text"/>
weekly	<input type="text"/>
monthly	<input type="text" value="x"/>
quarterly	<input type="text"/>
semiannual	<input type="text"/>
annual	<input type="text"/>
single event	<input type="text"/>

**Violation Base Penalty**

**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 type="text" value="x"/>	(mark with x)

**Notes**

**Violation Subtotal**

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

**Estimated EB Amount**  **Violation Final Penalty Total**

**This violation Final Assessed Penalty (adjusted for limits)**

## Economic Benefit Worksheet

**Respondent** Cecil Lou Frasier  
**Case ID No.** 37651  
**Reg. Ent. Reference No.** RN105602726  
**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
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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	\$233,655	6-Apr-2009	21-Jan-2010	0.79	\$9,282	n/a	\$9,282
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 and properly dispose of all municipal solid waste at the Site. The Date Required is the investigation date and the Final Date is the expected 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

\$233,655

**TOTAL**

\$9,282

### Compliance History

Customer/Respondent/Owner-Operator: CN603503921 Cecli Lou Frasier Classification: Rating:  
Regulated Entity: RN105602726 UNAUTHORIZED DUMPING Classification: Site Rating:  
ID Number(s): BLK E LOOP 254 RANGER  
Location: 2400 BLK E LOOP 254 RANGER  
TCEQ Region: REGION 03 - ABILENE  
Date Compliance History Prepared: July 07, 2009  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: July 07, 2004 to July 07, 2009  
TCEQ Staff Member to Contact for Information Regarding this Compliance History:  
Name: Clinton Sims Phone: 239-6933

#### 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 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

#### 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 4/30/2009 (741584)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
Date: 9/25/2008 (699919)  
Self Report? No Classification: Major  
Citation: 30 TAC Chapter 330, Subchapter A 330.15  
Description: Failure to dispose of wastes at a proerly permitted facility. Wastes were disposed on the property including tires, furniture, metal, wood, shingles and paper goods.
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance  
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  
CECIL LOU FRASIEUR;  
RN105602726**

§  
§  
§  
§  
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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2009-1049-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 Cecil Lou Frasier ("Respondent").

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

### **FINDINGS OF FACT**

1. At the time of the violation, Respondent owned an unauthorized solid waste disposal site located at 2400 Blk. E. Loop 254 in Ranger, Eastland County, Texas (the "Site"). The Site involves the management and/or the disposal of municipal solid waste ("MSW") as defined in TEX. HEALTH & SAFETY CODE ch. 361.
2. During an investigation conducted on April 6, 2009, a TCEQ Abilene Regional Office investigator documented that Respondent failed to prevent the unauthorized disposal of MSW. Specifically, approximately 14,750 cubic yards of municipal solid waste, including furniture, tire, paper, metal, and construction and demolition wastes, were disposed at the Site.
3. Respondent received notice of the violations on or about May 9, 2009.
4. The Executive Director recognizes that Respondent no longer owns the Site as of October 15, 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 Ellen and Cecil Lou Frasier" (the "EDPRP") in the TCEQ Chief Clerk's office on July 13, 2009.

6. Respondent filed an answer requesting a hearing on August 11, 2009, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on September 10, 2009.
7. On October 29, 2009, and March 26, 2010, this enforcement action was consolidated with TCEQ Docket Nos. 2009-0728-MSW-E and 2009-1811-MSW-E, respectively, and 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 Cecil Lou Frasier, John Charles May, Edward Russell Leath, Christopher Atwood Leath, Melissa May Leath, and Marilyn Leath-Dziuk" (the "EDSARP") in the TCEQ Chief Clerk's office on November 9, 2009.
8. On January 27, 2011, the Administrative Law Judge ("ALJ") issued Order No. 12, which set the evidentiary hearing for April 5-7, 2011. The SOAH docket clerk mailed a copy of Order No. 12 to Respondent at his last known address via first class mail, postage pre-paid. Additionally, Respondent participated in a pre-hearing conference with the ALJ, the Executive Director, and the additional parties on April 1, 2011.
9. On April 5, 2011, the ALJ convened the evidentiary hearing, but Respondent failed to appear. The ALJ entered a finding that Respondent was served with proper notice of the hearing, and the Executive Director requested that the matter be remanded to the Executive Director so that a Default Order may be entered and the case may be dismissed from the SOAH Docket.
10. The ALJ severed Respondent from the case and remanded this matter to the Executive Director by SOAH Order No. 15, Granting Motion to Sever and Remand; Abating Hearing; and Ordering Status Report, issued on April 6, 2011, so that TCEQ may dispose of this case on a default basis.

#### **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 §§ 330.7(a), and 330.15(a) and (c).
3. As evidenced by Finding of Fact No. 6, Respondent filed an answer requesting a hearing as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105, and the matter was referred to SOAH pursuant to 1 TEX. ADMIN. CODE §§ 155.53(b) and 155.101(a)(3) and 30 TEX. ADMIN. CODE § 70.109.
4. As evidenced by Finding of Fact No. 8, Respondent was provided proper notice of the evidentiary hearing in accordance with TEX. GOV'T CODE §§ 2001.051(1) and 2001.052, TEX. WATER CODE § 7.058, 1 TEX. ADMIN. CODE §§ 155.103(a) and (c)(3), 155.401 and 155.501(c) and (e)(2), and 30 TEX. ADMIN. CODE §§ 1.11, 1.12, 39.23, 39.25, 39.405, 39.413, 39.423, 39.425 and 80.6.

5. As evidenced by Finding of Fact Nos. 9 and 10, Respondent failed to appear for the evidentiary hearing, and pursuant to TEX. GOV'T CODE § 2001.056(4), TEX. WATER CODE § 7.057, and 1 TEX. ADMIN. CODE § 155.501(e)(1)(A), the ALJ dismissed the case from the SOAH docket so that the Commission may enter a Default Order against Respondent and assess the penalty recommended by the Executive Director pursuant to 30 TEX. ADMIN. CODE § 70.106(b).
6. 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.
7. An administrative penalty in the amount of five thousand two hundred fifty dollars (\$5,250.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
8. 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 five thousand two hundred fifty dollars (\$5,250.00) 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: Cecil Lou Frasier; Docket No. 2009-1049-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. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Respondent.

5. 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.
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 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.
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 Respondent if the Executive Director determines that Respondent 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.

**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 JENNIFER COOK**

**STATE OF TEXAS**

§

**COUNTY OF TRAVIS**

§

§

"My name is Jennifer Cook. 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.

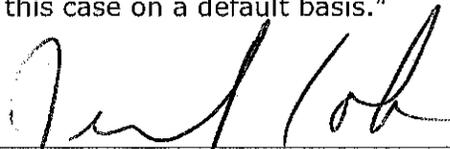
On behalf of the Executive Director of the Texas Commission on Environmental Quality, the Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Ellen and Cecil Lou Frasier" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on July 13, 2009.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, 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 Cecil Lou Frasier, John Charles May, Edward Russell Leath, Christopher Atwood Leath, Melissa May Leath, and Marilyn Leath-Dziuk" (the "EDSARP") was filed in the TCEQ Chief Clerk's office on November 9, 2009.

Respondent filed an answer requesting a hearing on August 11, 2009, and the matter was referred to the State Office of Administrative Hearings ("SOAH") on September 10, 2009. On January 27, 2011, the Administrative Law Judge ("ALJ") issued Order No. 12, which set the evidentiary hearing for April 5-8, 2011. The SOAH docket clerk mailed a copy of Order No. 12 to Respondent at his last known address via first class mail, postage pre-paid. Additionally, the Respondent participated in the pre-hearing conference between the ALJ and the parties on April 1, 2011.

Respondent failed to appear at the hearing on April 5, 2011. At that hearing, I requested and received a finding that Respondent was served with proper notice of the hearing pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(2). I also requested that the matter be remanded to the Executive Director pursuant to 1 TEX. ADMIN. CODE § 155.501(e)(1)(A), which gives an ALJ the authority to remand the case back to the agency "to allow the agency to dispose of the case on a default basis under TEX. GOV'T CODE § 2001.056(4) and the referring agency's rules."

The ALJ remanded the matter to the Executive Director by SOAH Order No. 15, Granting Motion to Sever and Remand; Abating Hearing; and Ordering Status Report, issued on April 6, 2011, so that TCEQ may dispose of this case on a default basis."

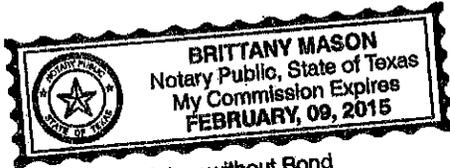
  
\_\_\_\_\_  
Jennifer Cook, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Jennifer Cook, 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 7 day of July, A.D. 2011.

*Brittany Mason*

Notary Signature



Notary without Bond