

Byron Cory

RN101612489

Docket No. 2010-1005-MLM-E

**Order Type:**

Default Order

**Findings Order Justification:**

N/A

**Media:**

MLM – WQ, MSW

**Small Business:**

Yes

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

1111 Horizon Boulevard, El Paso, El Paso County

**Type of Operation:**

truck washing facility with tires sales

**Other Significant Matters:**

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	\$1,050 (2007-1172-WQ-E)
Past-Due Fees:	\$6,273.38
Other:	None
Interested Third-Parties:	None

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

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$4,780

**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:** \$4,780

**SEP Conditional Offset:** N/A

**Compliance History Classifications:**

Person/CN – Poor

Site/RN – Poor

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

Byron Cory

RN101612489

Docket No. 2010-1005-MLM-E

***Investigation Information***

**Complaint Date(s):** N/A  
**Date(s) of Investigation:** March 26, 2010; May 24, 2010  
**Date(s) of NOV(s):** October 11, 2005; October 14, 2009  
**Date(s) of NOE(s):** May 3, 2010, January 15, 2011

***Violation Information***

1. Failed to provide adequate vector control [30 TEX. ADMIN. CODE § 328.56(d)(4)].
2. Failed to prevent the unauthorized discharge of waste into or adjacent to water in the state [TEX. WATER CODE § 26.121(a)(1)].
3. Failed to obtain authorization for the discharge of wastewater associated with a truck wash operation [TEX. WATER CODE § 26.121(a)(1) and 30 TEX. ADMIN. CODE § 305.42].
4. Failed to pay outstanding TCEQ wastewater investigation fees, water quality assessment fees, and administrative penalties [TEX. WATER CODE § 5.702 and 30 TEX. ADMIN. CODE § 21.4].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

1. Immediately:
  - a. Clean the affected areas;
  - b. Repair or replace the leaking lines in the wastewater system at the Facility;
  - c. Take all necessary actions to prevent any further unauthorized discharges from the Facility; and
  - d. Begin monitoring for vectors and develop and implement vector control measures in all areas of the Facility where tires are stored.
2. Within 30 days:
  - a. Submit payment for all outstanding fees and administrative penalties; and
  - b. Submit an administratively complete Texas Pollution Discharge Elimination System ("TPDES") permit application for the Facility.
3. Within 180 days, submit written certification that either a TPDES permit has been obtained for the Facility or that the discharge of wastewater from the Facility has ceased.
4. Submit written certification to demonstrate compliance:
  - a. Within 30 days for Technical Requirement No. 1;
  - b. Within 45 days for Technical Requirement No. 2.

Byron Cory

RN101612489

Docket No. 2010-1005-MLM-E

***Litigation Information***

**Date Petition(s) Filed:** January 18, 2011

**Date(s) Green Card(s) Signed:** January 20, 2011

**Date(s) Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

***Contact Information***

**TCEQ Attorneys:** Kari L. Gilbreth, Litigation Division, (512) 239-1320  
Lena Roberts, Litigation Division, (512) 239-3400

**TCEQ Enforcement Coordinator:** Heather Brister, Water Enforcement Section, (254) 761-3034

**TCEQ Regional Contact:** Kent Waggoner, El Paso Regional Office, (915) 834-4957

**Respondent:** Byron Cory, 1111 Horizon Boulevard, El Paso, Texas 79927

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

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# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	3-May-2010	<b>Screening</b>	24-May-2010	<b>EPA Due</b>	
	<b>PCW</b>	23-Oct-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Byron Cory		
<b>Reg. Ent. Ref. No.</b>	RN101612489		
<b>Facility/Site Region</b>	6-EI Paso	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	39899	<b>No. of Violations</b>	1
<b>Docket No.</b>	2010-1005-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Waste Tires	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>	Water Quality	<b>Enf. Coordinator</b>	Heather Brister
		<b>EC's Team</b>	Enforcement Team 1
<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>	\$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.

<b>Compliance History</b>	34.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$170
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Notes

Enhancement for two NOVs for dissimilar violations, one Agreed Order with a denial of liability, and poor performer classification.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes

The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts	\$11
Approx. Cost of Compliance	\$250

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$670
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

<b>Final Penalty Amount</b>	\$670
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$670
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$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.

<b>PAYABLE PENALTY</b>	\$670
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**Screening Date** 24-May-2010

**Docket No.** 2010-1005-MLM-E

**PCW**

**Respondent** Byron Cory

Policy Revision 2 (September 2002)

**Case ID No.** 39899

PCW Revision October 30, 2008

**Reg. Ent. Reference No.** RN101612489

**Media [Statute]** Waste Tires

**Enf. Coordinator** Heather Brister

### 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> )	0	0%
	Other written NOVs	2	4%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	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)** 24%

>> **Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

>> **Compliance History Person Classification (Subtotal 7)**

Poor Performer

**Adjustment Percentage (Subtotal 7)** 10%

>> **Compliance History Summary**

**Compliance History Notes**

Enhancement for two NOVs for dissimilar violations, one Agreed Order with a denial of liability, and poor performer classification.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 34%

Screening Date 24-May-2010

Docket No. 2010-1005-MLM-E

PCW

Respondent Byron Cory

Policy Revision 2 (September 2002)

Case ID No. 39899

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN101612489

Media [Statute] Waste Tires

Enf. Coordinator Heather Brister

Violation Number 1

Rule Cite(s)

30 Tex. Admin. Code § 328.56(d)(4)

Violation Description

Failed to provide adequate vector control, as documented during the March 26, 2010, investigation. Specifically, the Respondent stores over 150 tires outside and does not monitor for vectors or implement vector control measures.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			x

Percent 5%

>>Programmatic Matrix

	Major	Moderate	Minor
Falsification			

Percent 0%

Matrix Notes

The environment could be exposed to insignificant amounts of pollutants which would not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$9,500

\$500

Violation Events

Number of Violation Events 1

66 Number of violation days

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

mark only one with an x

Violation Base Penalty \$500

One single event is recommended.

Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

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

Violation Subtotal \$500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$11

Violation Final Penalty Total \$670

This violation Final Assessed Penalty (adjusted for limits) \$670

## Economic Benefit Worksheet

**Respondent** Byron Cory  
**Case ID No.** 39899  
**Reg. Ent. Reference No.** RN101612489  
**Media** Waste Tires  
**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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$250	26-Mar-2010	31-Jan-2011	0.85	\$11	n/a	\$11

Notes for DELAYED costs

Estimated cost to develop and implement vector control measures. Date required is the investigation date. 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

\$250

**TOTAL**

\$11



# Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

<b>DATES</b>	<b>Assigned</b>	3-May-2010	<b>Screening</b>	24-May-2010	<b>EPA Due</b>	
	<b>PCW</b>	23-Oct-2010				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Byron Cory		
<b>Reg. Ent. Ref. No.</b>	RN101612489		
<b>Facility/Site Region</b>	6-El Paso	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	39899	<b>No. of Violations</b>	3
<b>Docket No.</b>	2010-1005-MLM-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	Yes
<b>Multi-Media</b>	Waste Tires	<b>Enf. Coordinator</b>	Heather Brister
		<b>EC's Team</b>	Enforcement Team 1
<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>	\$3,000
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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.

<b>Compliance History</b>	37.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$1,110
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Notes: Enhancement for one notice of violation ("NOV") for same/similar violations, one NOV for violations that are dissimilar, one Agreed Order with a denial of liability, and poor performer classification.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondent does not meet the culpability criteria.

<b>Good Faith Effort to Comply Total Adjustments</b>	<b>Subtotal 5</b>	\$0
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<b>Economic Benefit</b>	0.0% Enhancement*	<b>Subtotal 6</b>	\$0
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Total EB Amounts: \$256  
 Approx. Cost of Compliance: \$6,000  
 \*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$4,110
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<b>OTHER FACTORS AS JUSTICE MAY REQUIRE</b>	0.0%	<b>Adjustment</b>	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

**Final Penalty Amount** \$4,110

<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$4,110
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<b>DEFERRAL</b>	0.0% Reduction	<b>Adjustment</b>	\$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.

<b>PAYABLE PENALTY</b>	\$4,110
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**Screening Date** 24-May-2010

**Docket No.** 2010-1005-MLM-E

**PCW**

**Respondent** Byron Cory

*Policy Revision 2 (September 2002)*

**Case ID No.** 39899

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN101612489

**Media [Statute]** Water Quality

**Enf. Coordinator** Heather Brister

### 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	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	1	20%
	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)** 27%

**>> Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

**>> Compliance History Person Classification (Subtotal 7)**

Poor Performer

**Adjustment Percentage (Subtotal 7)** 10%

**>> Compliance History Summary**

**Compliance History Notes**

Enhancement for one notice of violation ("NOV") for same/similar violations, one NOV for violations that are dissimilar, one Agreed Order with a denial of liability, and poor performer classification.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 37%

**Screening Date** 24-May-2010 **Docket No.** 2010-1005-MLM-E **PCW**  
**Respondent** Byron Cory *Policy Revision 2 (September 2002)*  
**Case ID No.** 39899 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101612489  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Heather Brister

**Violation Number** 1  
**Rule Cite(s)** Tex. Water Code § 26.121(a)(1)  
**Violation Description** Failed to prevent the unauthorized discharge of waste into or adjacent to water in the state, as documented during an investigation conducted on March 26, 2010. Specifically, during the investigation it was documented that wastewater was discharging from leaks in the lines of the wastewater system.

**Base Penalty** \$10,000

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

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			x	10%
Potential				

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	Percent
					0%

**Matrix Notes** Human health and the environment have been exposed to insignificant amounts of pollutants as a result of the violation.

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 1 59 Number of violation days

daily	
weekly	
monthly	
quarterly	x
semiannual	
annual	
single event	

*mark only one with an x*

**Violation Base Penalty** \$1,000

One quarterly event is recommended from the investigation date (March 26, 2010) to the screening date (May 24, 2010).

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

	Before NOV	NOV to EDPRP/Settlement
Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

**Violation Subtotal** \$1,000

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

**Estimated EB Amount** \$43

**Violation Final Penalty Total** \$1,370

**This violation Final Assessed Penalty (adjusted for limits)** \$1,370

## Economic Benefit Worksheet

**Respondent** Byron Cory  
**Case ID No.** 39899  
**Reg. Ent. Reference No.** RN101612489  
**Media** Water Quality  
**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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$1,000	26-Mar-2010	31-Jan-2011	0.85	\$43	n/a	\$43

Notes for DELAYED costs

Estimated cost to clean the area and to replace or repair the leaking lines. Date required is the date of the investigation. Final date is the anticipated 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

\$1,000

**TOTAL**

\$43

**Screening Date** 24-May-2010 **Docket No.** 2010-1005-MLM-E **PCW**  
**Respondent** Byron Cory *Policy Revision 2 (September 2002)*  
**Case ID No.** 39899 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101612489  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Heather Brister

**Violation Number** 2  
**Rule Cite(s)** Tex. Water Code § 26.121(a)(1) and 30 Tex. Admin. Code § 305.42  
**Violation Description** Failed to obtain authorization for the discharge of wastewater associated with a truck wash operation, as documented during an investigation conducted on March 26, 2010.

**Base Penalty** \$10,000

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

OR	Release	Harm			Percent
		Major	Moderate	Minor	
		Actual			
Potential					

**>>Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
			x		

100% of the rule requirement was not met.

**Adjustment** \$9,000

\$1,000

**Violation Events**

Number of Violation Events 2 59 Number of violation days

*mark only one with an x*

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

**Violation Base Penalty** \$2,000

Two monthly events are recommended from the investigation date (March 26, 2010) to the date of screening (May 24, 2010).

**Good Faith Efforts to Comply**

0.0% Reduction \$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

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

**Violation Subtotal** \$2,000

**Economic Benefit (EB) for this violation**

**Statutory Limit Test**

**Estimated EB Amount** \$213

**Violation Final Penalty Total** \$2,740

**This violation Final Assessed Penalty (adjusted for limits)** \$2,740

## Economic Benefit Worksheet

**Respondent** Byron Cory  
**Case ID No.** 39899  
**Reg. Ent. Reference No.** RN101612489  
**Media** Water Quality  
**Violation No.** 2

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				0.00	\$0	n/a	\$0
Permit Costs	\$5,000	26-Mar-2010	31-Jan-2011	0.85	\$213	n/a	\$213
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to prepare and submit a permit application to obtain authorization to discharge wastewater. Date required is the investigation date. 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

\$5,000

**TOTAL**

\$213

**Screening Date** 24-May-2010 **Docket No.** 2010-1005-MLM-E **PCW**  
**Respondent** Byron Cory *Policy Revision 2 (September 2002)*  
**Case ID No.** 39899 *PCW Revision October 30, 2008*  
**Reg. Ent. Reference No.** RN101612489  
**Media [Statute]** Water Quality  
**Enf. Coordinator** Heather Brister

**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"/>	<input type="text"/>	
Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>		

**>> Programmatic Matrix**

Matrix Notes	Falsification	Major	Moderate	Minor	Percent
	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	
<input type="text" value=""/>					
<b>Adjustment</b>					<input type="text" value="\$10,000"/>

**Violation Events**

Number of Violation Events  Number of violation days   
*mark only one with an x*  
 daily   
 weekly   
 monthly   
 quarterly   
 semiannual   
 annual   
 single event   
**Violation Base Penalty**

**Good Faith Efforts to Comply**  Reduction

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary	<input type="text"/>	<input type="text"/>
Ordinary	<input type="text"/>	<input type="text"/>
N/A	<input checked="" type="checkbox"/>	(mark with x)
Notes	<input type="text" value="The Respondent does not meet the good faith criteria for this violation."/>	
<b>Violation Subtotal</b> <input type="text" value="\$0"/>		

**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** Byron Cory  
**Case ID No.** 39899  
**Reg. Ent. Reference No.** RN101612489  
**Media** Water Quality  
**Violation No.** 3

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				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

N/A

### 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

\$0

**TOTAL**

\$0

# Compliance History Report

Customer/Respondent/Owner-Operator:	CN600862361	BYRON CORY	Classification: POOR	Rating: 163.00
Regulated Entity:	RN101612489	CORY, BYRON	Classification: POOR	Site Rating: 163.00
ID Number(s):				
Location:	1111 HORIZON BLVD, EL PASO COUNTY, TEXAS			
TCEQ Region:	REGION 06 - EL PASO			
Date Compliance History Prepared:	May 27, 2010			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	May 27, 2005 to May 27, 2010			
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History				
Name:	Heather Brister	Phone:	(254) 761-3034	

## 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 judgements, and consent decrees of the state of Texas and the federal government.
- |   |                                  |
|---|----------------------------------|
| <b>Effective Date: 04/14/2008</b>   | <b>ADMINORDER 2007-1172-WQ-E</b> |
| Classification: Major   |                                  |
| Citation: 30 TAC Chapter 305, SubChapter C 305.42(a)  |                                  |
| Description: Failure to submit an application for renewal of a Muti-Sector General Permit.  |                                  |
|   |                                  |
| Classification: Major   |                                  |
| Citation: 2A TWC Chapter 5, SubChapter A 5.702<br>2D TWC Chapter 26, SubChapter A 26.0135(h)  |                                  |
| Rqmt Prov: OP 2.a, 2.b, 2.c, and 2.d ORDER  |                                  |
| Description: Respondent owes overdue fees for waste water inspection fee financial administration account no 0104392 and overdue fees for water quality fee financial administration account no 0608578 and associated late fees for both accounts. |                                  |
- 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 | 10/19/2009 | (706437) |  |
| 2 | 04/29/2010 | (797375) |  |
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
- |   |          |                          |
|---|----------|--------------------------|
| <b>Date: 10/11/2005</b>   | (432011) |                          |
| Self Report?  | NO       | Classification: Moderate |
| Citation: 2D TWC Chapter 26, SubChapter A 26.121(a)(1)                                      |          |                          |
| Description: Failure to prevent an unauthorized industrial wastewater discharge.            |          |                          |
|   |          |                          |
| <b>Date: 10/14/2009</b>   | (706437) |                          |
| Self Report?  | NO       | Classification: Major    |
| Citation: 30 TAC Chapter 305, SubChapter C 305.42(a)  |          |                          |
| Description: Failure to submit an application for renewal of an Muti-Sector General Permit. |          |                          |
- 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  
BYRON CORY;  
RN101612489**

**§  
§  
§  
§  
§**

**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

### **DOCKET NO. 2010-1005-MLM-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. 5, 7 and 26, 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 Byron Cory ("Respondent").

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

### **FINDINGS OF FACT**

1. Respondent owns a truck washing facility that sells tires located at 1111 Horizon Boulevard in El Paso, El Paso County, Texas (the "Facility"). The Facility involves the management and disposal of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361. Respondent has discharged waste from the Facility into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any water in the state under the Texas Water Code.
2. During an investigation conducted on March 26, 2010, a TCEQ El Paso Regional Office investigator documented that Respondent:
  - a. Failed to provide adequate vector control. Specifically, Respondent stores over 150 tires outside at the Facility and does not monitor for vectors or implement vector control measures;
  - b. Failed to prevent the unauthorized discharge of waste into or adjacent to water in the state. Specifically, wastewater was discharging from leaks in the lines of the wastewater system at the Facility; and
  - c. Failed to obtain authorization for the discharge of wastewater associated with a truck wash operation.
3. During a record review conducted on May 24, 2010, TCEQ Austin Central Office staff documented that Respondent failed to pay outstanding TCEQ wastewater investigation fees for Account No. 0104392 and water quality assessment fees for Account No. 0608578 for fiscal year 2009, and administrative penalties for Account No. 23603735.

4. Respondent received notice of the violations in Paragraph 2 on or about May 8, 2010.
5. Respondent received notice of the violations in Paragraph 3 on or about January 20, 2011.
6. 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 Byron Cory" (the "EDPRP") in the TCEQ Chief Clerk's office on January 18, 2011.
7. By letter dated January 18, 2011, 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 January 20, 2011, as evidenced by the signature on the card.
8. 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 chs. 5 and 26, TEX. HEALTH & SAFETY CODE ch. 361, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 2.a., Respondent failed to provide adequate vector control, in violation of 30 TEX. ADMIN. CODE § 328.56(d)(4).
3. As evidenced by Finding of Fact No. 2.b., Respondent failed to prevent the unauthorized discharge of waste into or adjacent to water in the state, in violation of TEX. WATER CODE § 26.121(a)(1).
4. As evidenced by Finding of Fact No. 2.c., Respondent failed to obtain authorization for the discharge of wastewater associated with a truck wash operation, in violation of TEX. WATER CODE § 26.121(a)(1) and 30 TEX. ADMIN. CODE § 305.42.
5. As evidenced by Finding of Fact No. 3, Respondent failed to pay outstanding TCEQ wastewater investigation fees for Account No. 0104392 and water quality assessment fees for Account No. 0608578 for fiscal year 2009, and administrative penalties for Account No. 23603735, in violation of TEX. WATER CODE § 5.702 and 30 TEX. ADMIN. CODE § 21.4.
6. As evidenced by Findings of Fact Nos. 6 and 7, 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).

7. As evidenced by Finding of Fact No. 8, 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.
8. 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.
9. An administrative penalty in the amount of four thousand seven hundred eighty dollars (\$4,780.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
10. 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 four thousand seven hundred eighty dollars (\$4,780.00) 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: Byron Cory; Docket No. 2010-1005-MLM-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. Immediately upon the effective date of this Order, Respondent shall:
    - i. Clean the affected areas;
    - ii. Repair or replace the leaking lines in the wastewater system at the Facility;

- iii. Take all necessary actions to prevent any further unauthorized discharges from the Facility; and
  - iv. Begin monitoring for vectors and develop and implement vector control measures in all areas of the Facility where tires are stored, in accordance with 30 TEX. ADMIN. CODE § 328.56(d)(4).
- b. Within 30 days after the effective date of this Order, Respondent shall:
- i. Submit written certification as detailed in Ordering Provision No. 3.f., below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.a.i. through 3.a.iv.;
  - ii. Submit payment for all outstanding fees and administrative penalties, including any associated penalties and interest with the notation "Byron Cory; Financial Administration Account Nos. 0104392, 0608578 and 23603735" to:
    - Financial Administration Division, Revenues Section
    - Attention: Cashier's Office, MC 214
    - Texas Commission on Environmental Quality
    - P.O. Box 13088
    - Austin, Texas 78711-3088
  - iii. Submit an administratively complete Texas Pollution Discharge Elimination System ("TPDES") permit application for the Facility, in accordance with 30 TEX. ADMIN. CODE ch. 305 to:
    - Water Quality Applications Team, Permits Administrative Review Section, Review and Reporting Division, MC 161
    - Texas Commission on Environmental Quality
    - P.O. Box 13087
    - Austin, Texas 78711-3087
- c. Respondent shall respond completely and adequately, as determined by the TCEQ, to all requests for information concerning the TPDES permit application with 30 days after the date of such requests or by any other deadline specified in writing.
- d. Within 45 days after the effective date of this Order, Respondent shall submit written certification as detailed in Ordering Provision No. 3.f., below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 3.b.ii. and 3.b.iii.
- e. Within 180 days after the effective date of this Order, Respondent shall submit written certification that either a TPDES permit has been obtained for the Facility, or that the discharge of wastewater from the Facility has ceased.

- f. The certifications required by these Ordering Provisions 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."

The certifications and supporting documents shall be submitted 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:

Kent Waggoner, Water & Waste Section Manager  
El Paso Regional Office  
Texas Commission on Environmental Quality  
401 East Franklin Avenue, Suite 560  
El Paso, Texas 79901-1206

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

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For the Commission

**AFFIDAVIT OF KARI L. GILBRETH**

**STATE OF TEXAS**                   §  
  §  
**COUNTY OF TRAVIS**               §

"My name is Kari L. Gilbreth. 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 Byron Cory" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on January 18, 2011.

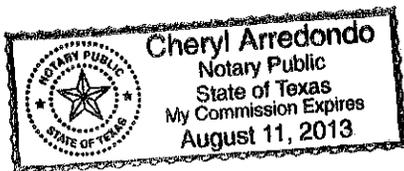
The EDPRP was mailed to Respondent's last known address on January 18, 2011 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," Respondent received notice of the EDPRP on January 20, 2011, as evidenced by the signature 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."

  
Kari L. Gilbreth, Staff Attorney  
Office of Legal Services, Litigation Division  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Kari L. Gilbreth, 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 28<sup>th</sup> day of June, A.D. 2011.



  
Notary Signature