

Executive Summary – Enforcement Matter – Case No. 42179  
Shelba G. Pruett and James Kozel  
RN106126725  
Docket No. 2011-1323-MSW-E

**Order Type:**  
Default Order

**Findings Order Justification:**  
N/A

**Media:**  
MSW

**Small Business:**  
N/A

**Location(s) Where Violation(s) Occurred:**  
27835 Farm-to-Market (FM) 2556, La Feria, Cameron County

**Type of Operation:**  
unauthorized municipal solid waste disposal site

**Other Significant Matters:**

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

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

**Texas Register Publication Date:** February 17, 2012

**Comments Received:** None

***Penalty Information***

**Total Penalty Assessed:** \$15,000

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

**Total Due to General Revenue:** \$15,000

**Compliance History Classifications:**

Person/CN – Not yet rated (Both Respondents)  
Site/RN – Not yet rated

**Major Source:** Yes

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2002

***Investigation Information***

**Complaint Date(s):** March 29, 2011  
Complaint Information: Alleged that approximately 35 - 40 thousand tires were illegally dumped at the site; also alleged that a man in a white van, who complainant believes to be the property owner, comes almost nightly to dump more tires at the site.

**Date(s) of Investigation:** April 25, 2011

**Date(s) of NOV(s):** N/A

**Date(s) of NOE(s):** July 20, 2011

***Violation Information***

Failed to prevent the unauthorized disposal of MSW (approx. 40,551 scrap tires) [30 TEX. ADMIN. CODE § 330.15(c).]

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**  
N/A

**Technical Requirements:**

1. Immediately, cease any additional storage or disposal of scrap tires at the Site;
2. Within 60 days, remove all scrap tires from the Site and dispose of them at an authorized facility; and
3. Within 75 days, submit written certification to demonstrate compliance.

***Litigation Information***

**Date Petition(s) Filed:** October 14, 2011

**Date(s) Green Card(s) Signed:** Unclaimed (both Respondents)

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

***Contact Information***

**TCEQ Attorneys:** Jim Sallans, Litigation Division, (512) 239-3400  
Lena Roberts, Litigation Division, (512) 239-3400  
James Murphy, Public Interest Counsel, (512) 239-6363

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

**TCEQ Regional Contact:** Jaime Garza, Harlingen Regional Office, (956) 430-6030

**Respondent:** Shelba G. Pruett and James Kozel, 27835 FM 2556, La Feria, Texas 78559-6441

**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>	20-Jul-2011	<b>Screening</b>	22-Jul-2011	<b>EPA Due</b>	
	<b>PCW</b>	26-Jul-2011				

<b>RESPONDENT/FACILITY INFORMATION</b>						
<b>Respondent</b>	Shelba G. Pruett and James Kozel					
<b>Reg. Ent. Ref. No.</b>	RN106126725					
<b>Facility/Site Region</b>	15-Harlingen	<b>Major/Minor Source</b>	Major			

<b>CASE INFORMATION</b>						
<b>Enf./Case ID No.</b>	42179	<b>No. of Violations</b>	1			
<b>Docket No.</b>	2011-1323-MSW-E	<b>Order Type</b>	1660			
<b>Media Program(s)</b>	Municipal Solid Waste	<b>Government/Non-Profit</b>	No			
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Mike Pace			
		<b>EC's Team</b>	Enforcement Team 6			
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000			

## Penalty Calculation Section

<b>TOTAL BASE PENALTY (Sum of violation base penalties)</b>	<b>Subtotal 1</b>	\$15,000
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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>	0.0% Enhancement	<b>Subtotals 2, 3, &amp; 7</b>	\$0
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Notes: No adjustment for compliance history.

<b>Culpability</b>	No	0.0% Enhancement	<b>Subtotal 4</b>	\$0
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Notes: The Respondents do 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	\$8,527
Approx. Cost of Compliance	\$202,755

\*Capped at the Total EB \$ Amount

<b>SUM OF SUBTOTALS 1-7</b>	<b>Final Subtotal</b>	\$15,000
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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>	\$15,000
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<b>STATUTORY LIMIT ADJUSTMENT</b>	<b>Final Assessed Penalty</b>	\$15,000
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<b>DEFERRAL</b>		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>	\$15,000
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**Screening Date** 22-Jul-2011

**Docket No.** 2011-1323-MSW-E

**PCW**

**Respondent** Shelba G. Pruett and James Kozel

*Policy Revision 2 (September 2002)*

**Case ID No.** 42179

*PCW Revision October 30, 2008*

**Reg. Ent. Reference No.** RN106126725

**Media [Statute]** Municipal Solid Waste

**Enf. Coordinator** Mike Pace

### Compliance History Worksheet

**>> Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	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)** 0%

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

N/A

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

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

N/A

**Adjustment Percentage (Subtotal 7)** 0%

**>> Compliance History Summary**

**Compliance History Notes**

No adjustment for compliance history.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 0%

Screening Date 22-Jul-2011

Docket No. 2011-1323-MSW-E

PCW

Respondent Shelba G. Pruett and James Kozel

Policy Revision 2 (September 2002)

Case ID No. 42179

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN106126725

Media [Statute] Municipal Solid Waste

Enf. Coordinator Mike Pace

Violation Number 1

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

Violation Description Failed to prevent the unauthorized disposal of municipal solid waste ("MSW"). Specifically, approximately 40,551 scrap tires (4,055 cubic yards) were disposed of at the Site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Table with columns: Release (Actual, Potential), Harm (Major, Moderate, Minor), and Percent (50%).

>> Programmatic Matrix

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

Matrix Notes Human health or the environment has been exposed to significant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors as a result of the violation.

Adjustment \$5,000

\$5,000

Violation Events

Number of Violation Events 3 88 Number of violation days

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

Violation Base Penalty \$15,000

Three monthly events are recommended based on documentation of the violation during the April 25, 2011 investigation to the July 22, 2011 screening date.

Good Faith Efforts to Comply

0.0% Reduction \$0

Table for Good Faith Efforts: Extraordinary, Ordinary, N/A (marked with x).

Notes The Respondents do not meet the good faith criteria for this violation.

Violation Subtotal \$15,000

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$8,527 Violation Final Penalty Total \$15,000

This violation Final Assessed Penalty (adjusted for limits) \$15,000

## Economic Benefit Worksheet

**Respondent** Shelba G. Pruett and James Kozel  
**Case ID No.** 42179  
**Req. Ent. Reference No.** RN106126725  
**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	\$202,755	25-Apr-2011	26-Feb-2012	0.84	\$8,527	n/a	\$8,527
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to properly remove and dispose of 40,551 scrap tires at an authorized facility. 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

\$202,755

**TOTAL**

\$8,527

# Compliance History

Customer/Respondent/Owner-Operator:	CN603840372 PRUETT, SHELBA G	Classification:	Rating:
Regulated Entity:	RN106126725 SHELBA G PRUETT PROPERTY	Classification:	Site Rating:
ID Number(s):	MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER R15106126725		
	MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER UNA455150202		
Location:	27835 FM 2556, LA FERIA, TX, 78559		
TCEQ Region:	REGION 15 - HARLINGEN		
Date Compliance History Prepared:	July 25, 2011		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	July 25, 2006 to July 25, 2011		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Mike Pace	Phone:	(817)588-5933

### Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period?      No
2. Has there been a (known) change in ownership/operator of the site during the compliance period?      No
3. If Yes, who is the current owner/operator?      N/A
4. If Yes, who was/were the prior owner(s)/operator(s)?      N/A
5. When did the change(s) in owner or operator occur?      N/A
6. Rating Date: N/A Repeat Violator: 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.)  
N/A
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - 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: CN603933219 KOZEL, JAMES Classification: Rating:  
 Regulated Entity: RN106126725 SHELBA G PRUETT PROPERTY Classification: Site Rating:  
 ID Number(s): MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER R15106126725  
 MUNICIPAL SOLID WASTE NON PERMITTED ID NUMBER UNA455150202  
 Location: 27835 FM 2556, LA FERIA, TX, 78559  
 TCEQ Region: REGION 15 - HARLINGEN  
 Date Compliance History Prepared: July 25, 2011  
 Agency Decision Requiring Compliance History: Enforcement  
 Compliance Period: July 25, 2006 to July 25, 2011  
 TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
 Name: Mike Pace Phone: (817)588-5933

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership/operator of the site during the compliance period? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: N/A Repeat Violator: 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.)  
N/A
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
N/A
  - 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  
CONCERNING  
SHELBA G. PRUETT AND  
JAMES KOZEL;  
RN106126725**

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**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER**

**DOCKET NO. 2011-1323-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 Shelba G. Pruett and James Kozel ("Respondents").

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

### **FINDINGS OF FACT**

1. Respondents own and operate an unauthorized municipal solid waste disposal site located at 27835 Farm-to-Market (FM) 2556 in La Feria, Cameron County, Texas (the "Site"). The Site 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 April 25, 2011, a TCEQ Harlingen Regional Office investigator documented that Respondents failed to prevent the unauthorized disposal of municipal solid waste ("MSW"). Specifically, approximately 40,551 scrap tires (4,055 cubic yards) were disposed of at the Site.
3. Respondents received notice of the violation on or about July 25, 2011.
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 Shelba G. Pruett and James Kozel" (the "EDPRP") in the TCEQ Chief Clerk's office on October 14, 2011.
5. By letter dated October 14, 2011, sent to each Respondents' last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served each Respondent with notice of the EDPRP. The United States Postal Service returned the EDPRPs sent by certified mail to each Respondent as "unclaimed." The first class mail has not been returned, indicating that each Respondent received notice of the EDPRP.
6. More than 20 days have elapsed since Respondents received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing.

### 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 each Respondent with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 6, 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 fifteen thousand dollars (\$15,000.00) 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 fifteen thousand dollars (\$15,000.00) 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: Shelba G. Pruett and James Kozel; Docket No. 2011-1323-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 any additional storage or disposal of scrap tires at the Site;
  - b. Within 60 days after the effective date of this Order, Respondents shall remove all scrap tires from the Site and dispose of them at an authorized facility; and
  - c. Within 75 days after the effective date of this Order, Respondents shall submit written certification and detailed supporting documentation, in accordance with Ordering Provision No. 3.d., below, to demonstrate compliance with Ordering Provisions Nos. 3.a. and 3.b.
  - d. The certification required by these Ordering Provisions shall be accompanied by detailed supporting documentation, including photographs, receipts, and/or other records, 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 supporting 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  
Harlingen Regional Office  
1804 West Jefferson Avenue  
Harlingen, Texas 78550-5247

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 Respondents 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. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

**S I G N A T U R E   P A G E**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF JIM SALLANS**

**STATE OF TEXAS**

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**COUNTY OF TRAVIS**

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

On behalf of the Executive Director of the Texas Commission on Environmental Quality, the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Shelba G. Pruett and James Kozel" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on October 14, 2011.

The EDPRP was mailed to each Respondents' last known address on October 14, 2011, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRPs sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondents received notice of the EDPRP, in accordance with 30 TEX. ADMIN. CODE § 70.104(c)(2).

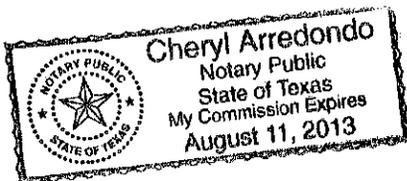
More than 20 days have elapsed since Respondents received notice of the EDPRP. Respondents failed to file an answer and failed to request a hearing."



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

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

Given under my hand and seal of office this 25<sup>th</sup> day of January, A.D. 2012.



  
\_\_\_\_\_  
Notary Signature