

EXECUTIVE SUMMARY – ENFORCEMENT MATTER – CASE NO. 36880
Frank Roberts and Linda Roberts
RN105376669
Docket No. 2011-2198-MSW-E

Order Type:

Default Order

Findings Order Justification:

N/A

Media:

MSW

Small Business:

N/A

Location(s) Where Violation(s) Occurred:

20278 Farm-to-Market 56, Kopperl, Bosque County

Type of Operation:

unauthorized municipal solid waste site

Other Significant Matters:

Additional Pending Enforcement Actions:	None
Past-Due Penalties:	\$2,969.88 (2008-1870-MSW-E; Referred for collection)
Past-Due Fees:	None
Other:	None
Interested Third-Parties:	None

Texas Register Publication Date: April 13, 2012

Comments Received: None

Penalty Information

Total Penalty Assessed: \$22,750

Total Paid to General Revenue: \$0

Total Due to General Revenue: \$22,750

Compliance History Classifications:

Person/CN – Average (Both Respondents)
Site/RN – Average

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: September 2002

Investigation Information

Complaint Date(s): N/A
Date(s) of Investigation: September 23, 2011
Date(s) of NOV(s): January 25, 2008; March 7, 2011
Date(s) of NOE(s): October 17, 2011

Violation Information

Failed to prevent the unauthorized disposal of municipal solid waste ("MSW") (approx. 2,000 scrap tires and 100 cu/yds of household waste) [30 TEX. ADMIN. CODE § 330.15(c) and TCEQ Agreed Order Docket No. 2008-1870-MSW-E, Ordering Provisions Nos. 2.a. through 2.c.].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:
N/A

Technical Requirements:

1. Immediately, cease accepting and/or processing any additional MSW at the Site;
2. Within 30 days, remove all MSW from the Site and dispose of it at an authorized facility; and
3. Within 45 days, submit written certification to demonstrate compliance.

Litigation Information

Date Petition(s) Filed: February 6, 2012
Date(s) Green Card(s) Signed: Unclaimed
Date(s) Answer(s) Filed: N/A

Contact Information

TCEQ Attorneys: Steven M. Fishburn, Litigation Division, (512) 239-3400
Lena Roberts, Litigation Division, (512) 239-3400
Amy Swanholm, Public Interest Counsel, (512) 239-6363

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

TCEQ Regional Contact: Frank Burleson, Waco Regional Office, (254) 761-3001

Respondent: Frank and Linda Roberts, 20278 Farm-to-Market 56, Kopperl, Texas 76652

Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 2 (September 2002)

PCW Revision October 30, 2008

TCEQ

DATES	Assigned	24-Oct-2011	Screening	22-Nov-2011	EPA Due	
	PCW	29-Jan-2011				

RESPONDENT/FACILITY INFORMATION			
Respondent	Frank Roberts and Linda Roberts		
Reg. Ent. Ref. No.	RN105376669		
Facility/Site Region	9-Waco	Major/Minor Source	Major

CASE INFORMATION			
Enf./Case ID No.	36880	No. of Violations	1
Docket No.	2011-2198-MSW-E	Order Type	Findings
Media Program(s)	Municipal Solid Waste	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Clinton Sims
		EC's Team	Enforcement Team 6
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$17,500
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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.

Compliance History	30.0% Enhancement	Subtotals 2, 3, & 7	\$5,250
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Notes: Enhancement for two NOV's with same/similar violations and one prior order containing a denial of liability.

Culpability	No	0.0% Enhancement	Subtotal 4	\$0
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Notes: The Respondents does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
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Economic Benefit	0.0% Enhancement*	Subtotal 6	\$0
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Total EB Amounts	\$288
Approx. Cost of Compliance	\$6,500

*Capped at the Total EB \$ Amount

SUM OF SUBTOTALS 1-7	Final Subtotal	\$22,750
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OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment	\$0
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Reduces or enhances the Final Subtotal by the indicated percentage.

Notes:

Final Penalty Amount	\$22,750
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STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$22,750
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DEFERRAL	0.0% Reduction	Adjustment	\$0
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Reduces the Final Assessed Penalty by the indicted percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes: No deferral is recommended for Findings Orders.

PAYABLE PENALTY	\$22,750
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Screening Date 22-Nov-2011

Docket No. 2011-2198-MSW-E

PCW

Respondent Frank Roberts and Linda Roberts

Policy Revision 2 (September 2002)

Case ID No. 36880

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105376669

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 notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	2	10%
	Other written NOVs	0	0%
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) 30%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance History Notes

Enhancement for two NOVs with same/similar violations and one prior order containing a denial of liability.

Total Adjustment Percentage (Subtotals 2, 3, & 7) 30%

Screening Date 22-Nov-2011

Docket No. 2011-2198-MSW-E

PCW

Respondent Frank Roberts and Linda Roberts

Policy Revision 2 (September 2002)

Case ID No. 36880

PCW Revision October 30, 2008

Reg. Ent. Reference No. RN105376669

Media [Statute] Municipal Solid Waste

Enf. Coordinator Clinton Sims

Violation Number 1

Rule Cite(s) TCEQ Agreed Order Docket No. 2008-1870-MSW-E, Ordering Provision Nos. 2.a. through 2.c. and 30 Tex. Admin. Code § 330.15(c)

Violation Description Failed to prevent the unauthorized disposal of municipal solid waste ("MSW"). Specifically, during the September 23, 2011 investigation, the investigator documented that the MSW had not been removed. Approximately 2,000 scrap tires (approximately 200 cubic yards) and approximately 100 cubic yards of household waste were disposed of at the Site.

Base Penalty \$10,000

>> Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual			X	25%
Potential				

>> Programmatic Matrix

Falsification	Major	Moderate	Minor	Percent
				0%

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

Adjustment \$7,500

\$2,500

Violation Events

Number of Violation Events 7 602 Number of violation days

mark only one with an x	daily	
	weekly	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$17,500

Seven quarterly events are recommended from the March 20, 2010 order effective date to the November 22, 2011 screening date.

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 Respondents does not meet the good faith criteria for this violation.

Violation Subtotal \$17,500

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$288

Violation Final Penalty Total \$22,750

This violation Final Assessed Penalty (adjusted for limits) \$22,750

Economic Benefit Worksheet

Respondent Frank Roberts and Linda Roberts
Case ID No. 36880
Req. Ent. Reference No. RN105376669
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	\$6,500	23-Sep-2011	11-Aug-2012	0.88	\$288	n/a	\$288
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

The approximate cost to dispose of 2,000 passenger car or light truck tires including a \$1,000 handling fee and the cost to dispose of approximately 100 cubic yards of various MSW. The Date Required is the investigation date and the Final Date is the estimated compliance date.

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

\$6,500

TOTAL

\$288

Compliance History

Customer/Respondent/Owner-Operator:	CN603269341 Frank Roberts	Classification: AVERAGE	Rating: 12.75
Regulated Entity:	RN105376669 20278 FM 56	Classification: AVERAGE	Site Rating: 12.75
ID Number(s):			
Location:	20278 FM 56, KOPPERL, TX, 76652		
TCEQ Region:	REGION 09 - WACO		
Date Compliance History Prepared:	November 22, 2011		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	November 22, 2006 to November 22, 2011		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:			
Name:	Clinton Sims	Phone:	(512) 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 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: 9/1/2011 Repeat Violator: NO

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
 - Effective Date: 03/20/2010 ADMINORDER 2008-1870-MSW-E**
 - Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)
 - Description: Failure to obtain written authorization from the TCEQ prior to the disposal of municipal solid waste.
- B. Any criminal convictions of the state of Texas and the federal government.
 - N/A
- C. Chronic excessive emissions events.
 - N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	09/02/2008	(701395)
2	10/24/2008	(704400)
3	03/08/2011	(900934)
4	10/18/2011	(957595)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 01/25/2008 (610017)**
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)
 - Description: Failure to obtain written authorization from the TCEQ prior to the disposal of municipal solid waste.
 - Date: 03/07/2011 (900934)**
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)
 - Description: Failure to obtain written authorization from the TCEQ prior to the disposal of municipal solid waste.
- F. Environmental audits.
 - N/A
- G. Type of environmental management systems (EMSs).
 - N/A
- H. Voluntary on-site compliance assessment dates.
 - N/A
- I. Participation in a voluntary pollution reduction program.
 - N/A
- J. Early compliance.
 - N/A
- Sites Outside of Texas
 - N/A

Compliance History

Customer/Respondent/Owner-Operator:	CN603582339 Linda Roberts	Classification: AVERAGE	Rating: 12.75
Regulated Entity:	RN105376669 20278 FM 56	Classification: AVERAGE	Site Rating: 12.75
ID Number(s):			
Location:	20278 FM 56, KOPPERL, TX, 76652		
TCEQ Region:	REGION 09 - WACO		
Date Compliance History Prepared:	November 22, 2011		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	November 22, 2006 to November 22, 2011		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History:			
Name:	Clinton Sims	Phone:	(512) 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 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: 9/1/2011 Repeat Violator: NO

Components (Multimedia) for the Site:

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.
 - Effective Date: 03/20/2010 ADMINORDER 2008-1870-MSW-E**
 - Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)
 - Description: Failure to obtain written authorization from the TCEQ prior to the disposal of municipal solid waste.
- B. Any criminal convictions of the state of Texas and the federal government.
 - N/A
- C. Chronic excessive emissions events.
 - N/A
- D. The approval dates of investigations. (CCEDS Inv. Track. No.)
 - 1 09/02/2008 (701395)
 - 2 10/24/2008 (704400)
 - 3 03/08/2011 (900934)
 - 4 10/18/2011 (957595)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
 - Date: 01/25/2008 (610017)**
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)
 - Description: Failure to obtain written authorization from the TCEQ prior to the disposal of municipal solid waste.
 - Date: 03/07/2011 (900934)**
 - Self Report? NO Classification: Moderate
 - Citation: 30 TAC Chapter 330, SubChapter A 330.15(c)
 - Description: Failure to obtain written authorization from the TCEQ prior to the disposal of municipal solid waste.
- F. Environmental audits.
 - N/A
- G. Type of environmental management systems (EMSs).
 - N/A
- H. Voluntary on-site compliance assessment dates.
 - N/A
- I. Participation in a voluntary pollution reduction program.
 - N/A
- J. Early compliance.
 - N/A
- Sites Outside of Texas
 - N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
FRANK ROBERTS AND
LINDA ROBERTS;
RN105376669**

**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

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DEFAULT ORDER

DOCKET NO. 2011-2198-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 Frank Roberts ("Mr. Roberts") and Linda Roberts ("Ms. Roberts") (collectively "Respondents").

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

FINDINGS OF FACT

1. Mr. Roberts owns and operates and Ms. Roberts owns an unauthorized municipal solid waste ("MSW") site located at 20278 Farm-to-Market 56 in Kopperl, Bosque 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 September 23, 2011, a TCEQ Waco Regional Office investigator documented that Respondents failed to prevent the unauthorized disposal of MSW. Specifically, the MSW which Respondents agreed to remove, pursuant to the terms of TCEQ Agreed Order Docket No. 2008-1870-MSW-E, has not been removed and it is estimated that there are currently approximately 2,000 scrap tires (approximately 200 cubic yards) and approximately 100 cubic yards of household waste at the Site.
3. Respondents received notice of the violation on or about October 22, 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 Frank Roberts and Linda Roberts" (the "EDPRP") in the TCEQ Chief Clerk's office on February 6, 2012.
5. By letter dated February 6, 2012, sent to Respondents' last known address via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Respondents with notice of the EDPRP. The United States Postal Service returned the EDPRP sent by certified mail as "unclaimed." The first class mail has not been returned, indicating that Respondents 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) and TCEQ Agreed Order Docket No. 2008-1870-MSW-E, Ordering Provisions Nos. 2.a. through 2.c.
3. As evidenced by Findings of Fact Nos. 4 and 5, the Executive Director timely served Respondents with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(c)(2).
4. As evidenced by Finding of Fact No. 6, Respondents failed to file a timely answer as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Respondents and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Respondents for violations of state statutes within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of twenty-two thousand seven hundred fifty dollars (\$22,750.00) 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 twenty-two thousand seven hundred fifty dollars (\$22,750.00) 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: Frank Roberts and Linda Roberts; Docket No. 2011-2198-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 accepting and/or processing of any additional MSW at the Site;
 - b. Within 30 days after the effective date of this Order, Respondents shall remove all MSW from the Site and dispose of it at an authorized facility; and
 - c. Within 45 days after the effective date of this Order, Respondents shall submit written certification to demonstrate compliance with Ordering Provisions Nos. 3.a. and 3.b. The certification 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 copies of documentation necessary to demonstrate compliance with these Ordering Provisions 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:

Frank Burlison, Waste Section Manager
Waco Regional Office
Texas Commission on Environmental Quality
6801 Sanger Ave., Ste. 2500

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

For the Commission

AFFIDAVIT OF STEVEN M. FISHBURN

STATE OF TEXAS

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COUNTY OF TRAVIS

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"My name is Steven M. Fishburn. 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 Frank Roberts and Linda Roberts" (the "EDPRP") was filed in the TCEQ Chief Clerk's office on February 6, 2012.

The EDPRP was mailed to Respondents' last known address on February 6, 2012, via certified mail, return receipt requested, and via first class mail, postage prepaid. The United States Postal Service returned the EDPRP 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."



Steven M. Fishburn, Attorney
Office of Legal Services, Litigation Division
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Steven M. Fishburn, 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 15th day of March, A.D. 2012.



Notary Signature

